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LABOR, THE COURTS, AND SECTION 7(A)

ALPHEUS T. MASON
Princeton University

Any economic system, whether systematic or not, involves a particular set of relationships between men and things and between men and men, and so needs the support of a corresponding legal and political system. One naturally expects political and legal change to follow social and economic revolutions. Perhaps that is the New Deal—a political and legal revolution to meet the demands of a new economic era. But whatever the situation may require to the mind of the Executive and Congress, there remains the question whether any particular legislative project is allowable under the Constitution. For our government, this matter of bringing law into conformity with economics meets with peculiar difficulties. It is not enough to secure rights by legislative enactment. Such guarantees must run the gauntlet first of administrative interpretation and ultimately of the courts. If one may judge from newspaper headlines, there is no surer way to bring our rights into controversy than to embody them in a statute.

It is then a bit surprising that organized labor should always have placed such emphasis on legislative enactment as a main basis of rights. Since 1895, when "government by injunction" became a household phrase, hardly a session of Congress has passed without some bill to improve labor's legal status. With the Court's application of the Sherman Act to unionist activities in the Danbury Hatters' Case of 1908, another item was put on labor's list of grievances to be remedied by legislation. These objectives are sought, not by means of a labor party, but by "rewarding friends and punishing enemies" as between the two old parties.[1] Lobbies

[1] The traditional non-partisan political policy was reaffirmed at the 54th annual convention at San Francisco this year. Resolutions calling for an independent labor

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are maintained in Washington and elsewhere which for persistence and vigor compare favorably with the loudest barkers of capitalism.

Labor has long been interested in annulling what it regards as prejudiced and erroneous judicial interpretations. The labor injunction was a perverse and vicious construction of equity power; the Court's application of the Sherman Act to labor a flagrant betrayal of Congressional intent, and so on. A most imposing list of legislative measures to remedy alleged shortcomings in New Deal legislation and administration has already been drawn up or sponsored by the A. F. of L.[2] Their economic and social objective is mainly the attainment of higher wages, shorter hours, and better working conditions. The broader purpose, to secure an equal share in the government of industry, had, until N.R.A., formed little or no part of labor's program.

The first important statute to improve labor's legal status was the Clayton Act of 1914. This measure was to prevent the application of anti-trust laws to labor activities and to restrict injunctions in labor disputes. But judicial interpretation soon showed that neither goal had been achieved; the Court again, so it appeared, had defeated legislative intent by judicial review. Despite these reverses, labor never lost faith in getting statutes to secure rights. Whether that faith can now be justified depends on what happens to the National Industrial Recovery Act.

A "new deal" for both industry and labor, this act made important concessions to employers and manufacturers by conceding them benefits advocated by the National Chamber of Commerce, namely, a relaxation of the anti-trust laws enabling trade associations to regulate prices, production, and trade practice. At the same time, conscientious employers were protected from cut-throat competition and sweat-shop rivalry by minimum wage and maximum hour requirements. For the first time, these social welfare provisions were made national in scope, and gains long sought by the workers were thus achieved.

But labor's great hope lay in the provisions for collective bargaining. Three clauses of Section 7(a) are in point: (1) every code must acknowledge the right of employees to organize and bargain

party were offered and their proponents claim that had they been submitted and considered on their merits, rather than smothered by parliamentary tactics, they would have received around 7,000 votes.

[2] *Report of the Executive Council of the American Federation of Labor*, October 1, 1934, p. 47 ff.

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collectively through representatives of their own choosing; (2) employees shall not be subjected to interference, restraint, or coercion by employers when they attempt to organize and select representatives; (3) employees shall not be compelled as a condition of obtaining employment to join a company union or to refrain from joining or forming an organization of their own choosing.

It should be said at the outset that the importance of these provisions is not in giving trade unions a new legal status. The legality both of unions and of collective action has not been questioned since Commonwealth v. Hunt in 1842. It had long been recognized that employees are entitled to organize for redress of grievances and to promote agreements with employers as to rates of pay and conditions of work. Speaking for the Court in 1921, Chief Justice Taft discussed the economic situation out of which trade unionism had developed:

> Trade unions were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave that employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court.[3]

Long before the enactment of Section 7(a), employees had the right to organize and bargain collectively *if they could*, and when they did so the law supported them. Nor is there any doubt that the Administration has given, and does give, governmental backing to this right in those industries in which organized labor has established itself.

From the outset, however, the Administration has been embarrassed by the fact that many workers, especially in the mass-production industries of the country, are not members of the A. F. of L. There are divisions and disputes among labor organizations themselves as to who may speak as the bona fide representative of

[3] American Steel Foundries v. Tri-City Council, 257 U.S. 184, 289. This statement is especially significant in view of the fact that no one did so much to establish and reinforce "government by injunction" as Mr. Taft. See my article, "The Labor Decisions of Chief Justice Taft," 78 *University of Pennsylvania Law Review*, March, 1930.

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labor. N.R.A. found trade unionism at the lowest ebb since 1916. Tremendous opportunities thus came to labor when it was least able, from the viewpoint of economic power, to take full advantage thereof. Membership in the A. F. of L. declined steadily from over four million in 1920 to less than two million in January, 1933. The four years of depression had weakened the organization greatly. In all big industries, such as automobile and steel, either the open-shop prevailed or company unions and employee representation held the field.

A survey by the National Industrial Conference Board, dated November, 1933,[4] sought to determine the relative emphasis on individual bargaining, collective bargaining through company unions, and bargaining through trade unions. The companies replying employed 2,585,740 wage earners; 1,180,580, or 45.7 per cent, bargained individually; 1,164,294, or 45 per cent, bargained through company unions, and 240,866, or 9.3 per cent, bargained through labor unions. By May, 1934, workers bargaining individually were 40 per cent; through employee representation plans, 49.6 per cent; through labor unions, 10.4 per cent.[5] Government had declared the right of collective bargaining, but had not defined the terms nor indicated the organization or process to be used. In a few months, 7(a) gave rise to any number of interpretations.

Collective bargaining prior to 1933 usually meant dealing through recognized trade union representatives.[6] Whatever the framers of 7(a) intended, there is reason to believe that during the early days of the Recovery Act, both Administration officials and employers understood the term in this sense. This attitude was short-lived. It soon became clear that supporters of employee representation and of company unions were set to combat the presumption that "collective bargaining" required dealing with outside union representatives. The bolder employers not only maintained that employee representation conformed to the requirement of 7(a), but also insisted that it was collective bargain-

[4] *Individual and Collective Bargaining under the N.I.R.A., November, 1933.* National Industrial Conference Board, Inc.

[5] *Individual and Collective Bargaining in May, 1934*, National Industrial Conference Board, Inc.

[6] This view is expressed in an article, "Effects of the Recovery Act upon Labor Organization," by Professor D. A. McCabe, which appears in the *Quarterly Journal of Economics* for November, 1934.

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ing of a very superior character indeed. This view is disputed by A. F. of L. leaders, who regard the company union as an instrument of coercion and interference—as the chief barrier against any real collective bargaining. Actual experience is not always cited in evidence.

President Green expressed organized labor's attitude at Akron on September 4 of last year. "The great labor organization which I have the honor to represent serves as a medium through which workers of the nation may give expression to their hopes and ideals."[7] The Federation not only regards itself as the one proper agency, but insists that this is the meaning of the law. The employer holds that he cannot recognize the union as an exclusive bargaining medium because it numbers only a minority of his workers. For light on these points, one looks in vain to the act itself.

Nor has the Administration clarified the issues involved. On August 23, 1933, Messrs. Johnson and Richberg sought to set forth the "plain meaning" of the section and declared that "employees can choose any one they desire to represent them, or they can choose to represent themselves. Employers likewise can make collective bargains with organized employees, or individual agreements with those who choose to act individually."[8]

A somewhat different interpretation was given by the President on October 30, in his settlement of the "captive" coal mine dispute, when he said that "representatives chosen by a majority will be given an immediate conference and separate conferences will be held with any representatives of a substantial minority."[9] A seemingly unequivocal and widely noticed construction was given by the President on February 1, in an executive order generally understood to mean that when an election is held to choose representatives for collective bargaining, those selected by a majority of the employees will represent all. But three days later, Johnson and Richberg issued a statement designed to correct what they characterized as "an erroneous press interpretation," the main burden of the explanation being that the "selection of majority representatives does not restrict or qualify in any way the right of minority

[7] *N.Y. Times*, September 5, 1933.
[8] *Ibid.*, August 24, 1933.
[9] *Ibid.*, October 31, 1933.

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groups of employees or of individual employees to deal with their employer."[10]

In less than a month, the National Labor Board ignored the Johnson-Richberg opinion and ruled in the Denver Tramway Corporation Case[11] that the union supported by the majority should set conditions for all the workers, and that the management must recognize representatives of the majority (constituting in this case only 52 per cent of the total) as the exclusive agency of the employees for collective bargaining. That the Board's ruling was not applicable in all cases, however, was shown on March 25, when the President disregarded it, as well as his own executive order of February 1, in his settlement of the threatened automobile strike. The arbitration agreement there was based on the proportional representation principle, and provided that "if there be more than one group, each bargaining committee shall have total membership *pro rata* to the number of men each member represents."[12] This seemed to dispose of the majority rule idea; but only temporarily, for the National Labor Board continued to follow it, upholding the claims of representatives of the majority even where the vote was for the works council.

The most recent decision is that of September 1 last, in the Houde Engineering Corporation Case, where the National Labor Relations Board, successor to the now defunct National Labor Board, held that "the only interpretation of Section 7(a) which can give effect to its purposes is that the representatives of the majority should constitute the exclusive agency for collective bargaining with the employer."[13] So we are back where we began. That is to say, the National Labor Relations Board's ruling reverses the interpretations of the President, the Recovery Administrator, and the General Counsel of N.R.A., and returns to the Labor Board's consistent attitude, namely, that the representatives chosen by a majority of employees shall be the "exclusive bargaining agency of all employees." The only qualification is that individual employees and minority groups retain the right to present grievances. The practical effect of this decision, so far as can be

[10] N.R.A., Release No. 3125, February 4, 1934.

[11] *In re* Denver Tramway Corp. (N.L.B. case no. 149). Release no. 3589, March 3, 1934.

[12] Administrative Order, No. X–11, March 26, 1934.

[13] *In re* Houde Engineering Corp. (N.L.R.B., Release 141, September 1, 1934.)

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seen, is that any union with 51 per cent or more of the workers can establish conditions of work for the other 49 per cent or less. Though generally supposed favorable to labor and violently opposed by the National Manufacturers' Association,[14] this ruling, as a matter of fact, affords no support to organized labor whenever and wherever the A. F. of L. union is in the minority.

Here the matter stands, in greater confusion than at any time since the act was passed. The Administration has had no firm or definite labor policy. It has vacillated and disagreed with itself so as alternately to give support to the employer and then to organized labor. As far as concerns the relative effects of administrative decision and indecision on the interests involved, labor has undoubtedly been the greater sufferer. And it is "in regard to Section 7(a) that the most cruel disillusion of the workers regarding N.R.A. has occurred."[15] Administrative uncertainty plus the inability of union representatives to establish their claim to the right to act as the sole agent of labor has definitely checked the A. F. of L.'s organizing movement, while employee representation plans have been growing steadily. Such uncertainty has both accentuated and embittered industrial controversies. It is high time this vital matter was put on a sounder footing.

For the President, General Johnson, and Donald Richberg, collective bargaining means representative bargaining. This view has the support of the National Manufacturers' Association and employers generally, but is strongly opposed by A. F. of L. officials, who maintain that the right to choose representatives for collective bargaining involves vesting in the representatives chosen by the majority the right to represent all. This contention is entirely in accord with the older connotations of collective bargaining, the

[14] On September 11, the Association issued a statement recommending that employers disregard the Board's ruling and continue "to abide by the long-standing and authoritative interpretations upholding the right of minority groups to deal with their employers . . . until competent judicial authority has declared otherwise."

[15] *Report of the Executive Council of the American Federation of Labor*, October 1, 1934, p. 75. "Workers who joined unions," the Report continues, "in good faith . . . found themselves dismissed for no other reason than that they had accepted, at face value, the promises contained in the law; company unions were created by employers to prevent the growth of real unions, and to forestall real collective bargaining. Agencies set up by the N.R.A. for the enforcement of Section 7(a) were either unwilling or unable to enforce the law, or delayed so long in its enforcement that unions concerned were weakened and even destroyed, and faith in this portion of the Act lost."

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distinguishing feature of which has never been its representative character, but rather the substitution of collective action for competition, whether between workers or groups of workers. Indeed, the majority rule seems never to have been disputed either by employers or employees until collective bargaining was embalmed in legislative enactment. "It was never questioned," the National Labor Relations Board declared in the Houde Engineering Case, "until employees who had been shepherded into company unions began, under the protection of Section 7(a), to join outside labor unions and to demand the right to bargain collectively through these unions."[16] No scheme is better calculated in the mind of A. F. of L. officials, to render collective bargaining futile than that which accords genuine trade unions and sham company unions an equal voice in bargaining with the employer. This issue must be finally settled in the courts. One can only venture an opinion as to the outcome.

In the algebra of the Recovery Act, the right of workers to or-organize and bargain collectively through representatives of their own choosing equals the right of the employer to conduct his own business as he pleases. Neither right is absolute. The contrary opinion is the cardinal error of both employer and employee; both have claimed more under the Act than its language justifies. Too frequently, labor takes the position that it can count on governmental support in any organized activity whatever. It might be well to recall that not even the right to strike is absolute. Labor's best friend on the Court, Mr. Justice Brandeis, ruled not long ago that "a strike may be illegal because of its purpose, however orderly the manner in which it is conducted."[17] Employers still insist upon an absolute right to conduct their own business as they see fit, though such right has long since suffered many restrictions, and that too with Supreme Court approval. Many of these rulings have had to do with protective labor legislation which has usually been sustained. Several protective labor clauses found their way into the New Deal legislation. The most questionable of these from a constitutional point of view is that relating to the minimum wage and those provisions in 7(b) which authorize employers and employees by mutual agreement, and with the approval of the

[16] *In re* Houde Engineering Corp. (N.L.R.B., Release 141, September 1, 1934).
[17] Dorchy v. Kansas, 272 U.S. 306 at 311 (1926).

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President, to set standards as to wages and other conditions of employment. Price fixing by the legislature has seldom enjoyed judicial endorsement; price regulation by employer and employee, even with Executive approval, is far more questionable.

A minimum wage statute for women in the District of Columbia was set aside in a five-to-four decision as recently at 1923.[18] Speaking for the Court, Mr. Justice Sutherland very carefully distinguished this type of regulation of the employer-employee relationship from those of hours of labor and other statutes which the Court had sustained. The wage feature of the contract constitutes the very heart of it, and therefore any regulation affecting wages must be attended by extraordinary circumstances. Unfortunately for the Act, Mr. Justice Sutherland could not find any circumstances sufficiently extraordinary. Concluding that a woman's morals depend upon considerations other than wages, the learned judge thought that if a woman requires a minimum wage to protect her morals, a man may need a minimum wage to protect his honesty. The framers of 7(a) may have taken Justice Sutherland's suggestions to heart, for the act subjects employers of men as well as of women to minimum wage requirement.

Only one New Deal case throws any light on what position the Court may take as to wage-fixing. This is the famous milk case of Nebbia v. New York.[19] Upholding a New York price-fixing statute, Mr. Justice Roberts, speaking for four colleagues, made two departures of great significance to New Deal legislation in general and minimum wage legislation in particular. The concept "business affected with a public interest," which has haunted the Supreme Court in cases involving the due process clauses of the Fifth and Fourteenth Amendments, is now abandoned as a satisfactory test of the constitutionality of measures regulating business practices and prices. Mr. Justice Roberts informed New York (and the other states) that "it is free to adopt whatever economic policy may reasonably be deemed to promote the public welfare. The courts," he added, "are without authority to declare such policy, or, when it is declared by the legislature, to override it."[20] The

[18] Adkins v. Children's Hospital, 261 U.S. 525.

[19] 291 U.S. 502 (1934).

[20] *Ibid.* at 537. On November 5, the views herein expressed gained additional support when a unanimous bench upheld the price-fixing provisions in the New York State milk control act in a test case brought by the Hegeman Farms Corpora-

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Roberts opinion also overthrows "the idea that there is something regularly sacrosanct about the price one may charge for what he makes or sells," and that the police power does not extend to price regulations. In no other quarter had this idea persisted quite so obstinately as in the Supreme Court itself. This changed attitude toward the sacrosanctity of "the heart of the contract" augurs well for minimum wage regulations.

One other provision of 7(a) has had a long judicial history—that which makes it illegal for an employer to require an employee not to join a union as a condition of employment. The first legislative effort to outlaw the anti-union, or "yellow dog," contract was in 1898, when Congress declared it a criminal offense for interstate commerce carriers to make such an arrangement with their employees. This statute was declared unconstitutional under the Fifth Amendment as an arbitrary interference with liberty of contract.[21] A similar state statute was disallowed in 1915 under the due process clause of the Fourteenth Amendment.[22] In 1917, the Supreme Court sustained an injunction to protect a "yellow dog" contract against the organizing activities of a labor union.[23] Despite the legal support which the Court has given this noxious form of labor agreement, several statutes recently passed declare it contrary to public policy. Although an employer making such a contract is not criminally indictable, he is denied access to a court either of law or of equity in his effort to secure its enforcement. The first such statute was that of Wisconsin in 1929. By the end of 1933, similar legislation had been passed in a dozen other states.[24] In like manner, the Norris-LaGuardia Act of 1932 declares the "yellow-dog" contract contrary to public policy and prohibits federal courts of equity from taking jurisdiction in suits brought to secure its protection. Section 7(a) goes further, and makes the "yellow dog" contract illegal, and any employer who insists upon any such agreement is guilty of coercion and is indicta-

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tion. Justice Sutherland concurred in the decision, only implying that there were certain details of the opinion which he did not approve. See *N. Y. Times*, Nov. 6, 1934.

[21] Adair v. United States, 208 U.S. 161 (1908).

[22] Coppage v. Kansas, 236 U.S. 1 (1915).

[23] Hitchman Coal and Coke Co. v. Mitchell, 245 U.S. 229 (1917).

[24] Arizona, California, Colorado, Idaho, Illinois, Indiana, Massachusetts, Minnesota, Ohio, Oregon, Pennsylvania, and Utah.

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ble under the Recovery Act. This legislation indicates a drift of public opinion which may yet be noted in the Grecian temple of our Supreme Court.

The clause relating to the "yellow-dog" contract may be regarded as part and parcel of the more general provision which guarantees employees freedom from "interference, restraint, and coercion" by employers in the exercise of their right of self-organization. From the point of view of labor, it is these provisions that mark a distinct advance in the statement of the substantive law of labor, and it is these, in my opinion, which will find support in the courts. Whatever uncertainty there may be in other provisions of the Act, there can be no doubt that the statute does make clear the fact that it is the exclusive concern of the workers whether they shall organize at all, what form their organization shall take, and the manner in which their representatives shall be chosen. "The government makes it clear," declares the Principles of Settlement of the Automobile Strike, "that it favors no particular union or particular form of employee organization or representation. The government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source."[25] The law has long upheld the right of laborers to organize and bargain collectively, but workers have not heretofore been protected in their right to do so against the discriminatory conduct of their employers.

The Roosevelt Administration regards collective bargaining as an instrument of recovery, as well as the logical means of conducting negotiations between employees and management; and it is declared to be the national labor policy. That the legislature has authority to make such a declaration and to insist on such conditions as will make it effective, there cannot be any doubt. Prior to 1930, a number of Supreme Court judges expressed this view, but always in dissent. Three dissenters in the Coppage Case, among them Associate Justice Hughes, took this position. Arguing in support of legislative authority to declare the policy of the state as to matters which have a reasonable relation to the welfare, peace, and security of the community, Justice Day said in dissent:

> In view of the relative positions of employer and employed, who is to deny that the stipulation [making non-union membership a condition of employment] here insisted upon and forbidden by law is essentially

[25] Administrative Order No. X–11, March 26, 1934.

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coercive? . . . Opinions may differ as to the remedy, but we cannot understand upon what ground it can be said that a subject so intimately related to the welfare of society is removed from the legislative power. . . . It would be difficult to select any subject more intimately related to good order and security of the community than that under consideration—whether one takes the view that labor organizations are advantageous or the reverse.[26]

Chief Justice Hughes reaffirmed this view fifteen years later. This time he spoke for a unanimous Court and sustained an injunction under the terms of the Railway Labor Act of 1926 to protect the rights of labor against a company union organized by the railroad company in contravention of the act. He said:

Congress was not required to ignore this right [to organize and bargain collectively], but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.[27]

Nor is there much difficulty in determining what constitutes "coercion" and "interference" in cases where there is a well established union. Johnson and Richberg, in their statement of August 23, pointed out that "the conduct of employers which is here prohibited" was defined by Chief Justice Hughes in the Railway Clerks' Case.[28] In interpreting the provisions of the Railway Labor Act of 1926 which served as a model for 7(a), the Chief Justice observed:

The intent of Congress is clear with respect to the sort of conduct that is prohibited. "Interference" with freedom of action and "coercion" refer to well understood concepts of the law. The meaning of the word "influence" in this clause may be gathered from the context. . . . The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. "Influence" in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls "self-organization." The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives

[26] Coppage v. Kansas, 236 U.S. 1, at 39–40 (1915).

[27] Texas and New Orleans Ry. Co. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 348, at 570–571 (1930).

[28] *N.Y. Times*, August 24, 1933.

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for the purposes of this act than in relation to well-known applications of the law with respect to fraud, duress, and undue influence.[29]

Although the phrasing in the Railway Labor Act differs slightly from that in the National Industrial Recovery Act,[30] both are directed against any activity on the part of the employer which would "corrupt or override the will" of the workers. And I should say that the employer may not ordinarily interest himself at all in the organization and selection of representatives of the employees without danger of corrupting or overriding the will of the employees. This point was stated not long ago by Judge Walter P. Stacy, chairman of the Steel Labor Relations Board. Replying to the petitioners' request to determine who should represent the employees in collective bargaining, Judge Stacy observed: "You [the employers] are not supposed to be interested in that. It is a controversy in which you have a moral interest, but you have no legal interest in it."[31]

It is important to note that the Railway Clerks decision is of limited application, and is conclusive only in a situation where the organized power of labor is undisputed, and where there is no question as to who are the legitimate representatives for purposes of collective bargaining. This case leaves unsettled the point of greatest difficulty, namely, who constitutes the bona fide representative or representatives where there are divisions among the workers. The National Labor Board usually defended its decisions favoring the right of a majority to act as the exclusive bargaining agency on the ground of expediency—the inconvenience of dealing with many groups. Its successor, the National Labor Relations Board, finds somewhat different grounds of decision. After citing various precedents for general acceptance of the majority principle, the new Board states its position in the Houde Engineering Case as follows:

This Board, therefore, stands on the majority rule, and it does so more willingly because the rule is in accord with American traditions of

[29] 281 U.S. 548 at 568.

[30] The former prohibits "interference, influence, or coercion" in the designation of representatives, whereas the latter forbids "interference, restraint, or coercion."

[31] Editorial in *New Republic*, September 4, 1934. See also *in re* Edward G. Budd Mfg. Co. (N.L.B.), Release No. 2283, December 15, 1933; *In re* S. Dressner & Son, Chicago (N.L.B. case 66), Release 3041, January 31, 1934; and *In re* Cochran Shoe Co. (N.L.B. case no. 170), Release 3315, February 16, 1934.

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political democracy, which empower representatives elected by the majority of the voters to speak for all the people.[32]

Even if we concede the authority of the Board to interpret the statute (which is at least doubtful), such an argument is not likely to prevail under a system of constitutional limitations where the claims of the minority may be held effective even over the will of the majority manifested in a legislative act.[33] A statement made by Mr. Justice Pitney in the Hitchman Coal Case is relevant here:

> Whatever may be the advantages of "collective bargaining," it is not bargaining at all, in any just sense, unless it is voluntary on both sides. The same liberty which enables men to form unions, and through the unions to enter into agreements with employers willing to agree, entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union.[34]

As already pointed out, the last phrase of this statement has been over-ruled by the Norris-LaGuardia and the National Industrial Recovery Acts. But the other parts, so far as I am aware, still hold, and are of great significance in considering the correctness of the National Labor Relations Board's decision in the Houde Engineering Case. If collective bargaining is not, as Mr. Justice Pitney says, bargaining at all unless it is voluntary, then those who remain non-union men and constitute a minority are deprived of their right to bargain collectively under a decision which forces them to accept conditions of work as established by representatives of the majority.

Moreover, employees do not ordinarily organize themselves. The initiative must come from employers or labor leaders. Either may be legitimate, but neither should be allowed to coerce, intimidate, or apply undue pressure. Employers sometimes curtail the freedom of employees to form a union of their own from fear and prejudice against organized labor; labor leaders may coerce and intimidate employees to gain power for themselves. The courts are likely to hold that employees have constitutional protection

[32] *In re* Houde Engineering Corp. (N.L.R.B., Release 141, September 1, 1934).

[33] Attorney-General Cummings announced on October 17 that the Department of Justice would not proceed against the company on the basis of the existing record. He also expressed doubt whether the case could be made to "stick" in court. *N.Y. Times*, October 18, 1934.

[34] Hitchman Coal and Coke Co. v. Mitchell, 245 U.S. 229, at 250–251 (1917).

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against both types of coercion and exploitation, to the end that true collective bargaining may be secured.

Even less tenable, therefore, is the A. F. of L. contention that the National Recovery Act makes it the exclusive bargaining agency of labor. The Recovery Administration has been unwilling to concede that the law was intended to establish the representatives of the majority *of any groups* as the exclusive representatives of all the workers. Nor do I believe that the Court will uphold labor's interpretation. It is one thing for a majority group to gain such a right as an economic fact; it is quite a different thing to insist that such a right has been conferred by an act of Congress. As every one knows, liberty of contract is not always so complete that it may not be regulated in the interest of the public welfare. The labor contention would seem to require somewhat broader constitutional support. It will, I think, have to find its basis in the idea that trade unions are public welfare institutions, entitled to legal and governmental sanction. Court opinions offer no support for this proposition; rather they point to the opposite conclusion. Trade unions, the Supreme Court has said, "are not public institutions, charged by law with public or governmental duties, such as would render the maintenance of their membership a matter of direct concern to the general welfare. If they were, a different matter would be presented."[35]

This analysis leads to the conclusion that collective bargaining is not something that can be gained or established by law; labor cannot expect the government to bargain in its behalf. The Act merely gives legal status to labor representatives which exist in fact. Where organized labor has failed to establish itself in economic power, government can do no more than safeguard the workers in their efforts at self-organization. Other compulsion brought to bear upon the employer must come from organized labor and not from government.

Not least among the significant aspects of the National Recovery Act is its philosophy. It expresses in clear terms the view that collective bargaining between employer and employee must be accepted as sound public policy. A strong case for labor can be built on this foundation. Labor can insist on legal protection against any activity on the part of the employer which denies self-organi-

[35] Coppage v. Kansas, 236 U.S. 1, at 16–17 (1915).

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zation and the right to bargain through representatives, but it can scarcely insist that government compel the employer to deal with an alleged majority where there may be other labor interests with perhaps equal claim to representation.

The sum of it all is that if labor is to secure its legitimate share in the government of industry, it must first lay the foundations for the exercise of such power within its own ranks. There must be greater mass organization, closer political unity, and less jurisdictional division among employees. As these words are written, the daily press reports a typical labor situation. Work on a four-million-dollar housing project has been halted two months, leaving hundreds of persons out of jobs, all because of a dispute between carpenters and steamfitters as to which group should cut recesses in floors for radiator piping![36] The organization and structure of unions seem ill-adapted to the opportunities now open to labor. Craft union organization is out-moded both from the point of view of the development of our industrial system and from that of the need for the growth of the economic power of labor. Industry is now vertically organized under overhead controls which are, or may be, responsible to government; logically, labor also must be so organized and so controlled. If labor is to meet the challenge of our social and economic development and discharge the legal responsibilities which N.R.A. foreshadows, craft unions must give way to vertical or industrial unions.[37]

A step in this direction was taken on October 11 at the fifty-fourth annual convention of the A. F. of L. in San Francisco, when it was voted to organize mass-production industries along "vertical" rather than "horizontal" lines. But there is no suggestion of a complete reorganization of existing craft unions or a reconstruction of the A. F. of L. itself.[38] This decision is perhaps nothing more than a concession to recently organized unions in those industries, such as steel, cement, automobiles, and aluminum, in which the A. F. of L. had, until recently, made little or no progress.

[36] *N.Y. Times*, October 17, 1934.

[37] This view apparently has the support of the Administration. It is, as General Johnson has said, "a theme which many of us here entertain." Release No. 602, September 1, 1933.

[38] The membership of the Executive Council was, it is true, enlarged to eighteen, but the present composition is by no means reassuring to those who favor general reorganization along industrial or vertical lines. See, in this connection, Travers Clement, "The A. F. of L. Faces a Fact," *Nation*, October 24, 1934.

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That the spirit of old craft unionism is still strong is shown by the fact that the chief internal problem before the San Francisco convention was a bitter dispute which split the building union group into two warring camps. This may well mean further intensification of jurisdictional disputes.

All of this requires vigorous, far-sighted, and imaginative leadership of which the labor movement as a whole stands today in sore need. The vision of labor leadership has been shortsighted and the objectives narrow. Legislatively, labor has sought chiefly to recall alleged erroneous judicial decisions; economically, labor leaders have aimed almost exclusively at higher wages, shorter hours, and better working conditions. That the main item in labor's program under the New Deal should have been a thirty-hour-week law affecting industrial workers was no accident; it was and is typical of labor statemanship. Long before he went on the Court, Mr. Justice Brandeis used to talk about industrial democracy. By this he meant the right of labor representatives to sit in the councils that govern the affairs of industry. It is doubtful whether this idea ever seriously occurred to American labor leaders—certainly not as the main objective. Thus the embodiment of this very right in law, almost a gift on a silver platter, found labor ill-prepared to accept and use it.[39]

Since the days of Samuel Gompers, labor has been devoting too much time, effort, and money to securing legal rights by means of the statute books. And in this it has at times been seemingly successful. Too frequently, however, rights thus secured have turned out gold bricks. It is high time that labor became skeptical of Magna Cartas and carried on the real fight among the rank and file of workers. Power today, as always, depends upon the organization of men, not upon the enactment of statutes. If men will not organize, they cannot hope to have power in moulding the new legal-political relationships now to be instituted to govern both American capital and American labor.

[39] There is no doubt that the present purpose is to realize the opportunities which N.R.A. offers. The San Francisco convention adopted an elaborate policy with respect to N.R.A. The keynote of this policy is that labor must be made an active partner in the supposed partnership of government, industry, and labor. In the mind of labor, this especially required representation on the code authorities, enforcement of Section 7(a), and the outlawing of company unions. *Report of the Executive Council of the A. F. of L., 54th Annual Convention, October 1, 1934*, p. 47 ff.

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POLITICS, PERSONALITIES, AND THE FEDERAL TRADE COMMISSION, I

E. PENDLETON HERRING
Harvard University

I

The Federal Trade Commission has been the object of more scholarly examination and critical discussion than any other administrative commission in the federal government. The statutory authority, the internal organization, and the administrative procedure of the Commission have all been studied. More specialized researches have thrown light on its regulation of competitive practices and its relations with the courts. Our purpose here is to view the Commission in its relations with business and with Congress and the President, in order to achieve some understanding of the political and economic factors that have influenced its activities.

Underlying both sets of relationships are the conflicts of economic groups and special interests which attempt to convert their force into political power when they touch the legislator or the President. The attempt here will be to explore some of these rather intangible aspects of the Commission's administrative experience.[1]

II

The Federal Trade Commission arose out of an attempt by the political leaders of 1914 to dispose of a troublesome problem. Dissatisfaction with the Sherman Act was general, and the 1912 platforms of all three major parties dealt with the question of trusts and combinations. The control of monopolies challenged attention as a campaign issue. Demand that the anti-trust laws be made

[1] The recent study by Carl McFarland (*Judicial Review of the Interstate Commerce Commission and of the Federal Trade Commission*) conclusively demonstrated the hampering effect of judicial review upon the initiative and independence of the Commission. While this study admirably discloses the control by the courts, the political and economic factors that influence the Commission lay beyond the author's purpose. McFarland concedes that "to attribute the lack of success entirely to unsympathetic treatment at the hands of the judges would be error—causes are rarely so simple. Personnel and amplifying legislation, among other things, are of first importance."

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more specific came both from the business interests and from the "trust-busting" element.[2]

President Wilson attempted to meet these divergent demands for remedial legislation by supporting two bills. One (later the Clayton Act) set out specifically to condemn certain practices as unlawful and "in restraint of trade." The other established an interstate trade commission to investigate corporate policy and organization and forestall malpractices by "pitiless publicity." This body was to take over and carry further the investigatorial function of the existing Bureau of Corporations. Before the measure was enacted, an important provision (Section 5) was added authorizing the Commission to prevent the use of unfair methods of competition in interstate commerce and prescribing a procedure by complaint, hearing, and orders to "cease and desist." According to former Commissioner Abram F. Myers, "Section 5 was added in the Senate as a sort of complement to the Clayton Act, which was undergoing the legislative process at the same time. It was thought that this catch-all provision would embrace all monopolistic practices not specifically enumerated in the Clayton Act, including minor abuses not worthy of the attention of the courts in the first instance."[3] The legislative debates show very convincingly that this general language was adopted with deliberate purpose: Congress was stating a broad ethical and economic principle. Apparently, Congress expected the Commission to deal with the prevention of monoply rather than with the punishment of fraudulent practices,[4] but the intention of Congress with regard to the actual responsibilities of the commissioners remained vague. It

[2] "Business men, trade associations, and commercial and industrial interests to whom the uncertainty of the law had become exasperating . . . took the view . . . that after nearly a quarter of a century of experience with the anti-trust law, it should be possible for the statesmen in Washington to make up their minds just what conduct they wished to forbid, and to describe it in language which the citizen could understand." G. C. Henderson, *The Federal Trade Commission*, p. 17.

[3] Abram F. Myers, Address at the Institute of Public Affairs, University of Virginia, July 9, 1932.

[4] "It is not conceived that Congress, which laid down no definition whatever, intended to either limit or extend the matters which constituted unfair methods of competition prior to the passage of the Clayton Act, but that its object was the creation of a board of commissioners." Kinney-Rome Co. v. F. T. C., 275 Fed. 665. See also George Rublee, "The Original Plan and Early History of the Federal Trade Commission," *Proceedings of Academy of Political Science*, Vol. XI, No. 4, p. 114 (Jan. 1926).

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was clear that the President and the legislature wanted a stricter control of commercial practices. But what share of this task was to be borne by the Commission? Was the Commission to emphasize its investigatorial functions? Was it to attempt a broad interpretation of unfair methods of competition? Was it to coöperate with those business interests desirous of learning the limits of lawful combination? In 1916, Woodrow Wilson said to a group of business men: "It is hard to describe the functions of that commission; all I can say is that it has transformed the government of the United States from being an antagonist of business into being a friend of business."[5]

Since the possibilities for variety in interpretation were so great, the scope for pressure upon the commissioners was equally wide. By leaving their powers vague, Congress provided an opportunity for building up through administrative rulings a law-merchant. At the same time, the chance was given for partisan influence mightily to affect government relations with business.

In examining a complaint, the federal trade commissioners have to consider two questions: first, does the matter fall within their jurisdiction, i.e., is it interstate and is it an unfair method of competition? Second, does it appear to the Commission that prosecuting the offender "would be to the interest of the public?" The Commission, however, has not been able to interpret freely these vague criteria. The "public interest" presumably is the standard for all legal acts by responsible officials, but the phrase was added to the law in order to give the commissioners discretion in choosing cases for prosecution. The courts, however, have made this standard of public interest a jurisdictional requirement and have not hesitated to over-ride the judgment of the commissioners as to the admission of complaints.[6] The Commission has not enjoyed greater freedom of administration as a result of this statutory phrase.

[5] Address before Grain Dealer's Association, Baltimore, September 25, 1916.

[6] In the Shade Shop Case, the Commission took jurisdiction over a petty dispute between two little shopkeepers. Justice Brandeis, in overruling the Commission, stated: "In determining whether a proposed proceeding will be in the public interest, the Commission exercises a broad discretion. But the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest. To justify filing a complaint, the public interest must be specific and substantial" (F. T. C. v. Klesner, 280 U.S. 19). When the Commission ruled that using false and misleading trade names constituted an un-

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While the question of fairness in trade relationships is at bottom an ethical one, the task of the Commission is not to punish the wicked, but rather to decide what business practices should be eliminated in order to free competitive forces. The problems of trade methods which it must consider are those discussed by business men themselves in their trade associations and in their conventions. The Commission's question is: Does an unfair practice restrict the play of competition to *an extent* detrimental to the public interest? But what is to be understood by the "public interest," what is meant by "competition," and what constitutes an "unfair method?"

The administrative experience of the Federal Trade Commission centers largely around the efforts made to answer these questions. Learned treatises have followed the lines of judicial interpretation with great care. The purpose here is to touch other threads in the web of interests surrounding the Commission. An understanding of its administrative problems is not to be found in any one factor, but rather in the pattern made by the interweaving of many elements. Some of these may appear inconsequential; others are of unmistakable significance. All have contributed to making a difficult task still more difficult.

For years, the Commission was housed in a temporary war-time emergency structure excessively hot in summer, often extremely uncomfortable in winter. For years, the work of the Commission was in arrears, and cases were brought to court when the evidence was no longer fresh.[7] Its rulings have been presented in meager and unconvincing form, and its organization and procedure have been justly criticized.[8] The turnover in the staff has been exceptionally high. During the first ten years, six members withdrew to one that

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fair method of competition on the part of the Winsted Hosiery Company, Justice Brandeis stated that "as a substantial part of the public was still misled by the use of the labels which the Winsted Company employed, the public had an interest in stopping the practice as wrongful" (F. T. C. v. Winsted Hosiery Co., 258 U.S. 483). Whether a complaint sufficiently affects the specific and substantial interests of the public remains for the courts to decide (Ostermoor and Co., Inc. v. F. T. C., 16 F (2d) 962). Is the public misled into dreaming of impossible resiliency by looking at a trade-mark showing the hugely swelling contents of an unfinished Ostermoor mattress? Is the public interest concerned in the accuracy with which a particular breed of hogs is advertised? (L. B. Silver & Co. v. F. T. C., 289 Fed. 985).

[7] *Annual Report*, 1924, p. 14.

[8] See Henderson, *op. cit.*, p. 334, and McFarland, *op. cit.*, p. 178.

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stayed. With an average of 418 employees in 1920, 348 entered and 297 left the Commission. With 450 employees in 1930, 116 entered and 46 left the service during the year. The tenure of commissioners has been brief on the average, especially during the early years.[9] Of the original appointees, none served for more than about half of their allotted time. Since 1920, however, the actual tenure has increased, and during the last decade it has remained comparatively stable. Of recent appointees, Charles E. Hunt has served since 1924; Edgar A. McCulloch and G. S. Ferguson since 1927; Charles H. March since 1929. The term of Victor Murdock was six and one-third years, of Huston Thompson six and five-twelfths, of J. F. Nugent, six and nine-twelfths, and of W. E. Humphrey, eight and nine-twelfths. While brevity of tenure has been regarded as an explanation for the shortcomings of the Commission, it actually has not had much significance.[10] Of more importance is the influence exerted by the commissioners who remained for some years. Continuity in policy was disrupted not so much by frequent changes in commissioners as by the fundamental differences of opinion held by those who served longest in the body. Factionalism was aggravated by shifts in personnel, but it was the dissension within the Commission itself that created difficulties.

It seems apparent that from the beginning the Commission was in a precarious position; for not only were its legal powers vague and its resources inadequate, but its relations with Congress were uncertain and the parties coming within its jurisdiction often very powerful. The more important the business, the wider its ramifications and the more numerous its allies and subsidiaries, the closer it comes within the Commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business, and often "big business."[11] Certainly the Commission has played an insignificant part in curb-

[9] *Annual Report*, 1925, p. 4.

[10] For a contrary view, see T. C. Blaisdell, *The Federal Trade Commission*, p. 76.

[11] After reviewing the Commission's experience with the oil, aluminum, steel, and meat-packing industries, Blaisdell concludes that the attempts toward restoring competitive conditions have been of slight effectiveness. The Commission was not equal to the task. The studies published and the recommendations made by the Commission have been in the main disregarded. *Op. cit.*, p. 255.

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ing the trusts. Its chief function today, as Abram F. Myers has said with some exaggeration, is "preventing false and misleading advertising in reference to hair restorers, anti-fat remedies, etc.—a somewhat inglorious end to a noble experiment."

The Commission can hardly be taken to task for going after easy game when the inadequate response from Congress is considered. The federal legislature has done nothing to support the Commission in developing its indefinite initial criteria into a body of administrative law for the regulation of business. The basic reasons for this may lie in traditional attitudes of respect for the courts, of suspicion toward bureaucracy, and distrust of official intervention even when intended to free competitive forces. But more immediate factors in the environment of the Commission indicate that "politics," in the sense of partisan and economic influences, has determined the course of administrative development. The Commission has suffered a fate which has been shared to some extent by the Federal Power Commission. Both agencies are called upon to deal with great corporations, and consequently they have been dragged around the political arena behind the chariots, sometimes of the "people's champions," sometimes of the "defenders of honest business" and the "foes of socialism." The Trade Commission has been a focal point of attack for those who were dissatisfied with the prevailing governmental policy toward business. The "masses" versus the "moneyed interests" is a perennially good issue for a politician to talk about, but it is not a problem for a bureaucrat to deal with. Only with strong political support can the Federal Trade Commission consistently administer its statutory responsibilities. Congress, rather than striving to strengthen the independence of the Commission, has actually hampered its development. A former commissioner (Abram Myers) testifies that "senators who would not think of seeking to influence a court in the decision of a case pending before it have no compunction about stalking the halls of the Commission and offering *ex parte* arguments and representations concerning cases pending before it. This attitude toward the Commission also is reflected in the efforts of individual legislators to control its acts; and it is not uncommon for the Commission to be under fire in the Senate for exercising its powers too gingerly and in the House for daring to use them at all."[12]

[12] *Anti-Trust Law Symposium*, p. 133.

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The Commission has indeed been the victim of many oratorical outbursts in Congress and of protest from interests outside. Democrats and Republicans, both liberal and conservative, have at different times criticized its work in scathing language. "I have been overwhelmed for several years with complaints from business men concerning the Federal Trade Commission for its inefficiency, incompetence, and inability to discharge the public business," declared the conservative Penrose of Pennsylvania in 1919; "I have hardly heard an epithet of condemnation in the English language that has not been visited upon every individual member of the Federal Trade Commission."[13] In 1926, Senator King, in order to express his disapproval, introduced a bill to abolish the Commission. He denounced its policy in a two-hour speech—"a Federal Trade Commission," he said "that is blind to trusts and combinations and monopolies and unfair methods of competition in commerce and misinterprets the law is not only a useless appendage but a real menace."[14] In 1919, the Commission, pursuing a policy of rather strict control, was denounced as a hindrance to business; in 1926, under a less stringent régime, it was denounced as an enemy of the people. This administrative agency is expected to interpret, under a vague mandate from Congress, an issue concerning which there is no stable consensus of opinion. Congress has set no clear goal; and political vicissitudes have prevented the Commission's shifting personnel from evolving one. A scrutiny of the *Congressional Record* and of the hearings before the Appropriations Committee reveals little appreciation of the problems of the Commission as an administrative agency. When congressmen discuss its affairs, their interest is obviously dictated by the situation in their own locality.

Whether viewed in its relations with Congress, with the courts, or with business, the Commission has generally been confronted with grave difficulties in attempting to enforce its statutory responsibilities. The political and economic elements that pressed for the accomplishment of the purposes of 1914 have grown weaker. The story becomes clear if we consider chronologically those experiences which bear upon this discussion.

[13] *Cong. Rec.*, August 22, 1919, p. 7311.
[14] *Cong. Rec.*, Feb. 9, 1926, p. 3630.

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III

During its first years, the Commission proceeded cautiously. The first three annual reports show a number of investigations under way, but more than a third of the applications for the issuance of complaints against unfair methods of competition were disposed of informally. Many communications were received from business men commending the purpose of the Trade Commission Act, although the Commission "made no attempt to define in general terms what methods of competition were unfair."[15] During 1918 and 1919, the Commission was much occupied with war work. In its brief existence before the war, problems of organization and preliminary study of its legal powers scarcely left time for the development of policy. The first undertaking of major importance was the food inquiry authorized by President Wilson in 1917. This investigation took much time and money and resulted in a number of reports, the most notable of which dealt with the meat-packing industry. What happened to the Trade Commission when it interfered with the meat-packers provides a concrete illustration of the political and administrative problems involved in attempting to regulate a powerful industry. Lobbyists for the industry fought bitterly to prevent an investigation and strove to render its results ineffective. "The packers," stated Senator Harris, "have tried to employ men who had influence with members of Congress or the government agencies. They have not stopped at anything in their propaganda."[16]

In August, 1919, in response to Senate Resolution 177 (initiated by Senator Norris), the Commission sent to Congress the unpublished report prepared for the President. The report was ordered to be printed as a public document in September, and a storm of indignation arose soon afterwards. The evidence offered by the Commission indicated unlawful combination and restraint of trade by the five largest meat-packers—Swift and Company, Armour and Company, Morris and Company, Wilson and Company, and the Cudahy Packing Company. The Commission recommended changes in the organization of the meat-packing industry and public ownership of some branches.[17] The sweeping

[15] *Annual Report*, 1916, p. 6.
[16] *Cong. Rec.*, October 22, 1919, p. 7310.
[17] *Annual Report*, 1919, p. 38.

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character of this investigation and the bold changes suggested caused a political back-fire almost fatal to the Commission. Five federal officials aroused the enmity of five great meat-packers, and the battle was on.[18]

The response in Congress was divided. Said Senator Smoot: "I think the report of the Trade Commission is not only sensational, but the conclusions in many respects are absolutely false." Many bills and resolutions were introduced and the debates were long and heated. The case for the packers was presented at length.[19] On October 20, Senator Watson introduced a resolution which was apparently intended to punish the Commission for its boldness in attacking big business and recommending government ownership of the stock-yards. Watson demanded a thorough investigation of the Commission on the ground that certain employees were believed to be engaged in socialist propaganda and in furthering the growth of socialistic organizations. "If the Senator can discredit the Commission in this investigation," one of his colleagues remarked, "he has accomplished more for the packers than they could for themselves with all their millions spent in lobbying and propaganda."[20] The federal employees suspected were exonerated after a private investigation, but later they were dropped from the Commission. It was charged that the desire to placate Senator Watson (of the Appropriations Committee) accounted for the discharge of these civil servants.[21]

Meanwhile, the Attorney-General, on the basis of the Commission's evidence, had announced that a criminal suit would be brought against the packers. The latter thereupon entered into negotiations for a consent decree. The Department of Justice differed from the Federal Trade Commission as to what the packers should be allowed to do. The courts accepted the Department's interpretation and preëmptorily forbade the spokesmen for the Commission to present their case.[22] Here the officials were at odds as to the government's view. Moreover, no sooner was the consent decree approved by the courts than efforts were

[18] The advertising expenditures of Swift and Company alone by 1919 had risen to nearly six-fold the total appropriation of the Commission. Blaisdell, *op. cit.*, p. 190.

[19] *Cong. Rec.*, October 3, 1918, pp. 11041–51.

[20] *Cong. Rec.*, December 3, 1919, p. 67.

[21] G. T. Odell, "The Commission Yields to Pressure," *Nation*, January 12, 1921.

[22] *Annual Report*, 1921, p. 46.

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started to modify it. The wholesale grocers were opposed to any modification of the decree that would permit the packers to deal in products unrelated to meat. But the packers had well organized systems for distributing food products. Why should they not be allowed to compete with the wholesale grocers or with the chain stores? What *kind of competition* was in the public interest? The relative nature of its criteria was demonstrated for the Commission. Many were the interpretations that might have been placed upon the phrase "unfair methods of competition," but as events continued to prove, its meaning was to be determined not by the Commission alone but by a combination of economic and political elements, among which this regulatory body was at times scarcely *primus inter pares*. The questions falling under its jurisdiction touched conflicting economic groups and involved likewise other branches of the government. Congress, the Chief Executive, the courts, and various administrative departments were at times concerned with the situation. There was no inherent consistency or unity on the part of the government.

The packers were desirous of getting from under the jurisdiction of the Commission. They seemed to feel that they would receive more sympathetic treatment from the officials in the Department of Agriculture.[23] Before the responsibility for regulating the meat-packing industry passed to the Department of Agriculture, the political strength and legal resourcefulness of big business were clearly demonstrated. The Commission received its baptism of fire when it engaged the five titans of the stock-yards. The Packers and Stockyards Act of 1921 transferred the supervision of the meat-packing industry to the Secretary of Agriculture. This move was strongly opposed by national organizations of women, farmers, and workers, among which the National League of Women Voters, the National Grange, and the railroad brotherhoods voiced protest.

The reaction of organized groups and of their spokesmen in Congress to the meat-packing investigation showed the difficulty of protecting the impartiality of an independent commission. Assuming this body to be unbiased in its findings, nevertheless the very character of the inquiry aroused the enmity of certain

[23] See Hearings before the Committee on Agriculture and Forestry, U.S. Senate, 65th Cong., 3rd Sess., on S. 5305, p. 17.

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interests and attracted the support of others. Samuel Gompers testified before the conference committee: "The Federal Trade Commission has proved its value in the many investigations it has made. It has been found that its findings cannot be influenced and that its work is in the interest of all the people instead of a few."[24] Some groups thus supported the work of the Commission and identified its aims with their own. The gratuitous loyalties that closed in about the Commission tended to obscure its disinterested character. Farmers, workers, and organized liberals were ready to proclaim the Commission their champion.

Then in 1920 an event occurred that precluded any such possibility. Here at the very beginning of the Commission's development the Supreme Court intervened, and in the Gratz Case (233 U.S. 421) asserted its authority to define the scope of the Commission's powers. The vague terms of the statute were not to be interpreted freely by the Commission. The development of a law of business practices by administrative rulings was thus checked at the start by judicial decision and held within the precedents of common law.[25] Very early in its career, the Commission learned of the pitfalls in its way. If the commissioners trod upon the toes of important industrialists, they aroused protests from important politicians. Disagreement with the Department of Justice added for the commissioners difficulties in making their rulings effective, and the growing restrictions of judicial review further limited their authority. The commissioners were slow to admit this development, if we can accept their annual reports as any indication of their attitude. In 1922, they reported as the notable feature of the year "the development of the law of unfair competition as exemplified by those decisions in the courts which further established and defined the powers of the Commission."[26] Repeated efforts were made to widen the concept of unfair methods of competition by introducing new principles regulating business practices. The Commission condemned "tying contracts" whereby a manufacturer, because of his control over the supply, bound dealers to observe certain conditions. The Commission likewise regarded the policy of "resale price maintenance" as an unfair trade practice. The Beech-Nut Packing

[24] *Cong. Rec.*, August 9, 1921, p. 4786.
[25] McFarland, *op. cit.*, pp. 45–47.
[26] *Annual Report*, 1922, p. 2.

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Company refused to sell its products to merchants who offered these articles to the public at a different price from that fixed by the Company. The Commission decided that price discrimination based on trade status was an unfair competitive device. Thus a manufacturer was not allowed to charge a wholesaler one price and a coöperative purchasing agency of retailers another price. Exclusive dealer arrangements were likewise proceeded against by the Commission as fostering monopoly, lessening competition, and constituting an unfair trade practice. The point of significance for this discussion is the fact that the commissioners, prior to 1925, made positive efforts to extend their powers and build up new criteria with regard to business behavior.

Writing in 1924, Henderson saw "no reason why the Federal Trade Commission should not realize fully the promise of the legislation of 1914," provided a few changes in procedure were made.[27] In other words, in the adverse decisions that had been handed down by the courts, he found no fundamental obstacle to the development of the Commission's power.

If between 1920 and 1923 the courts circumscribed the powers of the Commission, it was likewise during that same period that the commissioners were most aggressive in seeking to extend their authority. While a "liberal" majority dominated the Commission, adverse court decisions did not discourage efforts toward clarification and expansion of the concept of unfair methods of competition. When the composition of this board changed, its policy changed. There is no connection between this change in policy and the repulses administered by the courts. McFarland concludes that "the restraining hand of the judiciary was an important factor in turning the attention of the Commission to activities other than trade regulation through orders enforceable only in the courts." The Commission, however, cannot be regarded as a passive body easily turned about by the courts. Dominated by Murdock, Nugent, and Thompson, it differed basically from the Commission of Humphrey, Hunt, and Van Fleet. The judiciary cannot be held responsible for the Commission's quiescent attitude dating from 1925.

The explanation is to be found rather in political changes and in the personal views of the new appointees to the Commission

[27] Henderson, *op. cit.*, p. 342.

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after 1925. It was not the judges but the politicians that turned "the attention of the Commission to activities other than trade regulation." It is difficult to see the correlation between the court decisions and the course of administrative policy that McFarland emphasizes. The policy of the Commission changed in 1925, and the courts were concerned for two years or more with passing upon cases undertaken by the Commission before this date. Once these cases were disposed of, no major disagreements as to statutory interpretation occurred between the courts and the Commission. This is not attributable to the courts' defining the Commission's sphere clearly, but rather to a shift in personnel which brought on the Commission a majority who were of a like mind with the courts. Moreover, under the changed procedure of the Commission many questions of unfair methods after 1925 never reached the courts. The Commission's new relations with business meant that the possibility of judicial review was side-stepped.

Evidence to substantiate this case can be found by comparing the Commission proceedings of 1924 and 1925. In 1924, Commissioner Van Fleet was the dissenting voice. The grounds for his disagreement with the majority indicate a more restricted view of the Commission's interstate jurisdiction in regulating unfair methods of competition. He was more critical of the evidence relied upon in condemning industries and he was less ready to interfere with private business "in the public interest."

By 1925, Thompson and Nugent had become the dissenting minority. Their conception of the Commission's function was in sharp contrast with that of Van Fleet. They disagreed with his narrow interpretation of the Commission's authority. To them, the Commission's function was essentially "prophylactic"—not merely corrective but also preventive of business abuses. To dismiss the charges against a business man guilty of an unfair trade practice upon promise of reform, but not to make public the facts of the case and the findings of the Commission, was to fail in deterring others. "The making of wrong a personal matter," Thompson stated, "causes a shrinking by the offender and may be a hardship on him, but the rights of the consuming public to be put upon notice, and of the competitor to be protected from unfair business practices, far outweigh the damage done to the reputation of the one committing the wrong."[28] Thompson was

[28] Dissent in Federal Trade Commission v. Mack, Miller Candle Company.

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inclined to emphasize the interest of the consumer; Van Fleet that of the entrepreneur. The welfare of both are implicit in the welfare of the public. But at what point shall one special interest be regarded as closer to the public interest? The phrases and words supposed to serve as criteria in making judgments have entirely different meanings for these dissenting commissioners. What constitutes deception? What is a monopoly? When is the public interest affected? Underlying the answers given these questions were fundamentally different philosophies of economics and politics. It is the attitude of the individual commissioner toward business, rather than the relations of the courts to the Commission, that explains, in chief measure, the significance of the Federal Trade Commission as a regulatory agency. Here is an outstanding case where conflicting political and economic influences have disrupted the course of administrative development.

(*To be concluded in the next issue*)

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THE INTERNATIONAL SETTLEMENT AT SHANGHAI, 1924–34

WILLIAM W. LOCKWOOD, JR.
Bowdoin College

I

It is becoming increasingly clear that the decade following the Washington Conference constituted a distinct epoch in the Far East. The revolutionary surge of Nationalist China with its war-cry, "abolish the unequal treaties," threw the foreign Powers on the defensive for the first time in a century. Skillful Chinese diplomacy supported by physical, moral, and economic force swept away foreign rights and privileges of long standing. Expansive world prosperity bolstered up a sagging Japanese financial structure and encouraged all the Powers to respect the self-denying pledges of the Washington treaties and the demands of Chinese nationalism. This period terminated with the Japanese attack on Mukden in September, 1931. As hard times put increasing strain upon the economy of the Island Empire, the Japanese army, with continental ambitions rekindled, launched a bold campaign for hegemony north of the Great Wall—and possibly south.

During the nineteen-twenties, the center of gravity in China shifted to the Yangtse Valley. Shanghai, the foreign-controlled metropolis which stands at the cross-roads of Far Eastern commerce and dominates an immense hinterland, assumed a position of increasing importance in the domestic economy and international politics of China. Long the gateway of foreign influences, political, economic, and cultural, this cosmopolitan city now felt the force of new currents tugging at the base of the structure of foreign privilege. It was only natural, in fact, that ideas imported into China from the West should demonstrate their power at their premier port of entry. Strikes, riots, boycotts, and menacing armies—these manifestations of militant anti-foreignism in the years 1925–27 startled the foreign authorities at Shanghai from their complacency. The first response was conciliation; the second, the massing of foreign troops.

When the tension was eased in 1927 by the ascendancy of the moderate wing of the Kuomintang under General Chiang Kai-shek, a period of change was inaugurated in the International

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Settlement at Shanghai. Its foreign régime was modified to admit a measure of Chinese control over municipal affairs. This reorientation of Settlement policy received the blessing of Mr. Justice Feetham, who made a study of the Settlement in 1930–31 at the invitation of the foreign authorities. The South African jurist, accepting the return of the settlement to China as the ultimate goal, reported in favor of further cautious reforms admitting the Chinese to active coöperation in a more complete civic partnership. At the same time, the progress of extraterritoriality negotiations between China and the Powers made it appear by 1931 that foreign privilege would shortly be abolished in law as it had already been nullified in practice except in a few foreign-controlled centers. It was generally recognized, however, that the new day would dawn but slowly at Shanghai, where a determination to safeguard foreign interests considered vital led the Powers to insist upon the necessity of a transitional régime.

The outbreak of Sino-Japanese hostilities brought fresh complications. The process of change at Shanghai has since been retarded in tempo, if its direction has not actually been reversed. The Nanking government, threatened by agrarian Communism to the south and west, and by Japan in the north, has been unable to continue its revisionist program either by applying frontal pressure or by enlisting foreign aid. With the post-war concert of the Powers now split wide open, and political uncertainty prevailing throughout the Far East, Shanghai affairs have been allowed to drift. The dramatic turn of events along the land frontiers of China, however, should not obscure the importance of developments in the Yangtse Valley. The present lull in political changes at Shanghai affords an opportunity to appraise the effects of shifting political and economic tides upon the life of that city, whose status presents many of the typical aspects of present-day imperialism, together with certain unique opportunities for experiment in international administration.

Shanghai owes its strategic position in the economy and politics of the Far East to a combination of geographic, historical, and political factors. The natural outlet for a vast interior region both fertile and populous, this treaty port accounts for more than one-half of the foreign trade of China and approximately one-third of her modern industry. It is also the financial capital and safety deposit vault of a country whose general state of insecurity has

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driven large hoards of liquid wealth to this sanctuary.[1] Closely involved in the economic primacy of Shanghai is the heavy concentration within the foreign settlements of foreign population and property interests in China. Foreign investment in China has been mainly the investment of ownership capital in a few areas under foreign control. The billion-dollar stake in Shanghai in 1931 represented nearly one-half of the total foreign direct business investment (excluding government obligations) in China proper (including Hongkong) and Manchuria, or two-thirds of the total for the eighteen provinces (including Hongkong). Approximately two-thirds of this Shanghai investment was British-owned.[2] The growth since 1914 of Japanese interests at Shanghai—shipping, trading, banking, and industrial—explains in part why Sino-Japanese hostilities at Mukden spread within a few months to Shanghai.

Greater Shanghai, with its population of more than three millions, is made up of three mutually independent municipalities —respectively Chinese, French, and international in their control. We shall confine our attention chiefly to the International Settlement, for here the major part of the business activity of the city is concentrated and here arise the more complex questions of international control.

The origins of the International Settlement may be briefly recalled. In 1845, the British consul at Shanghai and the Chinese Taotai (intendant of circuit and superintendent of customs), each wishing the other "daily happiness," agreed upon an area to be set aside for the residence of British merchants in accordance with the treaty of Nanking (1842). Subsequently, French and American settlements were likewise established. In 1863, the British and American settlements were amalgamated to form the Foreign (International) Settlement. A municipal council, elected and supervised by foreign taxpayers, was created to administer the self-governing municipality under the terms of the Land Regulations, a municipal constitution approved by representatives of China and the Treaty Powers. The Land Regulations assign

[1] C. F. Remer, *Foreign Investments in China* (New York, 1933), p. 97.

[2] *Ibid.*, p. 395. It is worthy of note that of more than thirteen billions invested abroad by Americans between 1912 and 1930, only about one per cent found its way to China. Cf. Paul D. Dickens, *A New Estimate of American Investments Abroad* (U.S. Department of Commerce, *Trade Information Bulletin*, No. 767, Washington, 1931), pp. 24, 27.

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certain functions to the consuls of the Treaty Powers. They elect the members of the "Court of Foreign Consuls" before which the Council may sue or be sued in its corporate capacity, and their approval, together with that of the ministers of the Treaty Powers, is required for alterations in the municipal by-laws. The autonomy of the Settlement in respect to jurisdiction over its Chinese population has little foundation in the original treaties. Its explanation is rather to be sought in the historic process by which the foreign community, with the justification of "necessity" and the protection of extraterritoriality and gunboats, evolved a municipal régime patterned on Western concepts of security and orderly government. Over a period of sixty years, Chinese authority in matters of courts, police, taxation, and legislation was increasingly excluded from within the expanding Settlement boundaries—a development in which Chinese officials grudgingly acquiesced.[3] With this favorable conjuncture of geographical and political factors, Western business enterprise has led in building up along the mud banks of the Whangpoo River the great urban center of China and one of the chief ports of the world.

II

When Nationalist China threw down its challenge to foreign rights throughout the country, the tide of foreign control at Shanghai commenced to ebb. The years following the riot of May 30, 1925, with its bloody climax, have witnessed innovations along two main lines: (1) the admission of resident Chinese to a share in municipal government, followed by the acceptance of greater municipal obligations towards the Chinese community, and (2) a qualified recognition of the jurisdiction of the National Government of China over certain aspects of Settlement affairs.

In 1863, the foreign diplomats in Peking, at the suggestion of the American minister, had declared jointly that there should be "a Chinese element in the municipal system, to whom reference shall be made, and assent obtained to any measure affecting the Chinese residents."[4] Sixty-five years passed, however, before this principle was put into effect. Three Chinese were at last added to the Council in 1928, and two years later the number was increased to five. The normal foreign membership in recent years has been

[3] Cf. *Report of the Hon. Mr. Justice Feetham, C. M. G., to the Shanghai Municipal Council* (Shanghai, 1931), Pt. II, Ch. 5.

[4] *Ibid.*, Vol. I, pp. 94–95.

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five British, two Americans, and two Japanese. An effort has also been made to appoint qualified Chinese to a few responsible posts on the municipal staff.[5] Needless to say, municipal harmony has been greatly improved by the granting of a limited franchise to the Chinese community, which pays two-thirds of the municipal taxes and constitutes ninety-seven per cent of the total Settlement population of one million. How much independent leadership the Chinese councillors have exercised is difficult to determine because of the privacy of Council meetings, and the tradition of collective responsibility before the public. In February, 1934, the Chinese Ratepayers' Association, prompted perhaps by the pressure of the Japanese for greater influence in Settlement affairs, petitioned unsuccessfully for an increase in the number of Chinese councillors from five to nine, the present number of foreign representatives.

Under the Land Regulations, wide powers are concentrated in the Council. Ratepayers' meetings are usually perfunctory in character. The franchise of both foreigners and Chinese is closely limited by a property qualification;[6] and the Council membership, foreign and Chinese, is drawn very largely from the ranks of big business.[7] The German and Russian communities, important foreign minorities which no longer enjoy extraterritorial rights in China, are not represented by nationals on the Council. Thus, despite the significant admission of Chinese to a share in the

[5] The personnel in the upper ranks of the staff remains predominantly British, but Chinese have been appointed to the following positions: assistant secretary, adviser on muncipal affairs, deputy police commissioner, and auditor. The Chinese taxpayers are also permitted to elect six Chinese to the Council's advisory committees as well as two land commissioners. In 1933, six young Chinese graduates of the Central Political Institute at Nanking were attached to the Council's staff for a four months' training period.

[6] Foreign taxpayers cast a record vote of 1,787 in the elections of March, 1934. (*North China Herald*, March 28, 1934, p. 489). The total number of eligible voters is approximately twice this figure, while the foreign population of the Settlement is somewhat in excess of 26,965, the official figure for 1930. Chinese taxpayers cast a total of 2,011 votes in the March election of one-third of the board of directors of the Chinese Rate-payers' Association, which in turn elects the Chinese members of the Municipal Council. The remaining two-thirds of the board are chosen by commercial organizations and resident guilds (*North China Herald*, March 30, 1934, p. 523). The 1930 census puts the Chinese population of the Settlement at 971,397.

[7] The present chairman of the Council, for example, is one of several councillors closely affiliated with important real estate interests. He is also a director of the local bus company and of an investment concern which has substantial holdings in the tramway lines. Two of the pressing problems now before the Council are road-widening and the reorganization and control of transportation facilities.

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responsibility of government, the municipal régime as at present constituted remains highly oligarchical in character.

With Chinese representation on the Municipal Council, there has come halting acceptance by the foreign community of what Mr. Justice Feetham called "the civic point of view." This is the principle that Chinese residents of the Settlement are not simply interlopers to be tolerated on sufferance, but members of the community contributing largely to its prosperity and entitled to the benefits customarily afforded by progressive municipal governments. The recognition of this principle was signalized by the admission of Chinese to the municipal parks in 1928 for the first time. It was also given effect in the field of education where the Council had long denied any "absolute duty" to educate either foreign or Chinese children in municipal schools. In 1931, the authorities adopted a new policy stated to be "the provision of suitable educational institutions for the children of the residents in the International Settlement and those who directly or indirectly contribute to the rates [taxes], irrespective of nationality." Between 1929 and 1933, appropriations for foreign municipal schools almost doubled; for Chinese schools they more than quadrupled. With increasing grants-in-aid to private schools as well, the Council last year for the first time in its history spent more for Chinese than for foreign education. Municipal primary and secondary schools for Chinese in 1933 reached the number of ten, with an enrollment of approximately 5,500 at the close of the year.

To abolish racial discrimination in the benefits of municipal rule is one thing; to enlarge those benefits in conformity with standards prevailing in the West, in many colonial areas, or even in certain progressive Chinese cities, is another. The school building program adopted in 1931 was to provide accommodation by the end of 1938 for seven and one-half per cent of the Chinese children of school age in the Settlement. Even this modest aim is apparently too much for the taxpayers, for last January the Council decided upon curtailment. The park facilities of the Settlement are estimated at one acre to every 8,000 inhabitants, a ratio which, according to the mild-spoken *North China Herald*, "compares terribly even with those congested cities of Manhattan and Berlin." A twenty-cent admission fee reserves these precious acres for the more well-to-do minority. While land values in terms of silver have at least quadrupled since 1920, congested

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slum areas have multiplied at a rapid rate. Health services and hospital facilities for indigent foreigners and Chinese, especially for the latter, are grossly inadequate, as pointed out by an official investigating commission in 1932. Little has yet been done to remedy the deficiency. It may be said in fairness that a comparison of Shanghai with an American or European city of comparable size is unjust, and that the special position of the Settlement calls for unusually heavy expenditures on military and police protection. Nevertheless, the authorities have yet to face squarely the social problems created by the rapid growth of an urban proletariat.[8] Tax rates in the Settlement are unusually low and the powers-that-be are reluctant to sanction any upward revision. Until adequate financial provision is made for meeting the pressing needs of the community, the title "Model Settlement" will invite the retort "model for whom?"

III

New questions involving the external relationships of the International Settlement have arisen in recent years with the creation in adjoining areas of a new Chinese municipality, the City Government of Shanghai. This energetic administration has made substantial headway since 1927 in the fields of public works, utilities, education, and other municipal services. Its long-range Regional Plan calls for the urban development of a large area adjoining the foreign settlements and the creation of a new harbor at the mouth of the Whangpoo River to supersede the congested port facilities of the foreign settlements farther up the channel. Except for an impressive civic center partially completed, this Plan is little more than a paper plan today. Its fulfillment will call for a state of security, a supply of capital, and standards of administration lacking at present. It is realistically based, however, on what now appears to be the natural drift of the expanding city and may in time affect real estate values and port revenues in the constricted foreign areas. The modernization of the Chinese metropolitan region is expected to facilitate the eventual return of the foreign municipalities to Chinese control.

The City Government has precipitated a major controversy

[8] Steps have recently been taken, however, to ameliorate the distressing plight of the ricksha-puller. The question of factory regulation in the Settlement is discussed below, pp. 1040–1043.

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with the authorities of the International Settlement by challenging their jurisdiction in the External Roads Areas. In these two large extra-Settlement areas, the Municipal Council has acquired land for road-building, extended municipal services, collected taxes, and even exercised police powers. For years, increasing congestion in the Settlement impelled expansion, and despite continual conflict over police authority there was no effective Chinese opposition to the extension of foreign municipal activities until 1925. In July, 1930, however, the Council opened negotiations with the City Government looking toward the return of the disputed areas to Chinese control. It was hoped that a compromise arrangement could be made along the lines proposed at the time by Judge Feetham.

A settlement of this perplexing controversy seemed near at hand in 1932. But the Japanese attack at Shanghai and the stiffening of Japanese policy intervened to alter the situation. The Northern External Roads Area is the place of residence of a large section of the Japanese community, which naturally opposes its rendition. It was occupied at once by Japanese troops when hostilities broke out and served as a base of operations against the Chinese forces. Since the signing in May, 1932, of the peace agreement creating a neutralized zone around Shanghai, the Japanese navy has built in the Northern Area a huge concrete structure, ostensibly a hospital and barracks for a garrison of 2,000 men, but in reality nothing less than a fortress.[9] This building, situated so as to dominate the External Roads Area, the chief railway station of Shanghai, and the new Chinese civic center, leaves little doubt as to Japanese intentions in this region.

Meanwhile negotiations over the future of the extra-Settlement Roads have become a three-cornered affair. In July, 1932, the Japanese rejected a *modus vivendi* satisfactory to the Chinese and the other foreign representatives on the ground that the participation offered them in the joint-control scheme was inadequate. For two years, the negotiations have been deadlocked. Conflicting claims to jurisdiction in these disputed areas are likely sooner or later to precipitate a serious clash, although the Chinese have not yet made any determined effort to force the issue.

[9] In May, 1934, the strength of foreign military forces in Shanghai was as follows: American, 1,800; Japanese, 1,500–1,600; French, 1,450; British, 1,071 (*North China Herald*, May 23, 1934, p. 264.)

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With the creation of the National Government at Nanking and the reorganization of the Chinese municipality in Shanghai, the Chinese have sought to extend the jurisdiction of certain governmental agencies within the boundaries of the International Settlement. The broad question thus raised is whether by piecemeal modification this foreign area will gradually be brought within the orbit of Chinese control.

The incident of May 30, 1925, led to a widespread demand for rendition of the foreign-dominated Mixed Court of the Settlement. This court had jurisdiction over all Chinese and those foreigners who did not enjoy extraterritorial rights. By agreement between China and the Treaty Powers, it was superseded on January 1, 1927, by a Provisional Court, and this in turn was replaced three years later by two new courts, the Shanghai Special Area District Court and its appellate division, the Second Branch Kiangau High Court.[10] In these courts, Chinese judges enforce modern Chinese law codes as well as the land regulations and by-laws of the Settlement. Important controls over the operation of the courts, however, are reserved to the Municipal Council. This compromise arrangement has worked to the reasonable satisfaction of both parties, although, especially in the earlier years, difficulties arose over various illegal attempts on the part of Chinese military commanders and administrative bureaus to extend their jurisdiction into the Settlement by way of the courts. In the suppression of Communist activity, the municipal police have cooperated effectively with Nanking. It may be added that the failure of the Chinese courts in the Settlement to deal severely with the illegal activities of boycott organizations during the winter of 1931–32 was a *casus belli* at Shanghai. With the multiplicity of courts caused by the persistence of extraterritoriality, there continues to be a measure of confusion and uncertainty in the judicial arrangements of Shanghai, but less perhaps than the clumsiness of the system might lead one to expect.

The issue of Chinese jurisdiction in the International Settlement has also been raised in the matter of taxation. An important feature of the vaunted security of the Settlement has been the immunity of both foreign and Chinese firms from Chinese taxes,

[10] The old Mixed Court of the French Concession was replaced in 1931 with a similar arrangement. Both agreements were renewed for a three-year period in February, 1933.

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excepting tariff duties and a nominal land tax.[11] Foreign business, which is largely exempt from home taxation, has had to bear only the comparatively light burdens of municipal taxes, except in so far as operations outside the Settlement brought it within reach of the Chinese authorities. Whether foreign firms within or without the foreign areas of China are legally subject to Chinese taxation has long been a matter of dispute. The exemption of Chinese firms in the Settlement is clearly devoid of treaty sanction. The local community at an early date, however, found Chinese taxes on Chinese residents a burden on business enterprise. By the turn of the century, therefore, the Settlement authorities were barring troublesome Chinese tax agents from the foreign area and affirming the principle "that goods as well as other property within the limits of the said concession are under Municipal protection and without the jurisdiction of the Chinese authorities."[12]

Circumstances compelled a modification of this practice in the post-war decade. The Extraterritoriality Commission recommended in 1926 that foreigners in China be required to pay "such taxes as may be prescribed in laws and regulations duly promulgated by the competent authorities of the Chinese government and recognized by the Powers concerned as applicable to their nationals."[13] This principle has been carried out informally in a limited way. The National Government has been collecting certain excise taxes, such as those on tobacco, cement, flour, and yarn, from both foreign and Chinese firms in the Settlement. Foreign business men and diplomatic representatives have acquiesced as a matter of business and political expediency. Furthermore, the Municipal Council, by means of a special police squad, has been serving since 1929 as the administrative agent of the Chinese government in enforcing the collection of the stamp and rolled-tobacco taxes upon small Chinese firms in the Settlement.

In so far as the immunity of the Settlement from taxation means chiefly the evasion of irregular levies to finance destructive civil wars and to line the pockets of Chinese warlords, it is open to little objection. It is difficult to defend, however, when it exempts

[11] Speaking strictly, this so-called tax on land is rent paid to the Chinese government for the perpetual lease of land.

[12] Letter from the senior consul to the Taotai, dated July 2, 1899. Quoted by Feetham, *op. cit.*, Vol. I, p. 107.

[13] *Report of the Commission on Extraterritoriality in China* (Washington, 1926), p. 109.

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the richest port of China from its proportionate share of the tax burden of constructive national or regional government. Foreign business interests are naturally reluctant to yield this privilege, and find influential allies in their Chinese competitors and colleagues. In the case of Chinese firms, the arrangement referred to above affords a means of collecting within the Settlement national taxes regularly levied elsewhere, while at the same time the administrative authority of the Council is unimpaired. Precedent has thus been established for a procedure which may have wider applications in the future.

Vlasco Ibanez is reported to have said of Shanghai: "It is like nowhere else on earth." One may echo this sentiment in observing that this large industrial center is totally devoid of factory regulation except for a few building rules and fire regulations. Here, among some 360,000 industrial workers, of whom eighty per cent are women and children, unbridled exploitation exists in its rawest forms.[14] Poverty in China is not confined to treaty ports, of course, but as R. H. Tawney remarks, "the fact that peasants are starving in Shansi or Kansu is not a reason why factory operatives should be sweated in Shanghai or Tientsin."[15] Professor Tawney writes of industrial conditions in Shanghai and elsewhere in China as follows:

> If conclusions may be drawn from the inquiries hitherto carried out, it would seem reasonable to say that, with the exception of certain individual establishments, which have preserved a more intelligent policy, the conditions generally obtaining in factory employment recall those of the first, and worst, phase of the Industrial Revolution in England. Not only are hours preposterously long, and wages almost incredibly low, but part of the work is often done by relays of cheap and unpaid juvenile workers, sometimes imported from the country, and occasionally, it is alleged, actually sold to their employers, in shops which are frequently little better than barns, and in which the most elementary conditions of health and safety appear to be ignored. . . . To import Western industrial technique without importing Western methods of controlling it is to prepare a disaster.[16]

A stringent factory law was promulgated by the lawmakers at Nanking in December, 1929, but little has yet been done to put it into effect, even in part. In August, 1933, the Ministry of Industries set up a Central Bureau of Factory Inspection which

[14] These figures were compiled by the Ministry of Industries in 1930. H. G. W. Woodhead (ed.), *China Year Book, 1933* (Shanghai, 1933), pp. 362, 381.

[15] *Land and Labour in China* (New York, 1932), p. 143.

[16] *Ibid.*, pp. 149–150.

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announced in April, 1934, a program for gradual enforcement of the law in five stages. Whatever the intentions of the National Government, it can do little without the coöperation of the authorities in the foreign-controlled areas, of which the International Settlement is industrially the most important. Thus factory control in Shanghai is complicated, not only by a tangle of legal jurisdictions, but also by the existence of three mutually independent municipalities, each with its own administrative prerogatives and traditions.

The International Settlement authorities were long apathetic toward factory abuses which the chairman of the Council himself referred to in 1932 as "little short of appalling." A municipal by-law proposing mild child labor regulation was twice rejected by the ratepayers in 1925. Six years later, the Council, spurred by the action of the National Government, endorsed factory regulation in principle. Following a holocaust in a local rubber factory in February, 1933, which cost the lives of eighty-one workers, an amendment to the by-laws was approved granting the Council the right to control factory conditions in the Settlement by a system of licensing. The Council has expressed willingness to coöperate with the Chinese in the concurrent adoption and enforcement of legislation. The Chinese authorities, however, have opposed this procedure, maintaining that the Settlement is Chinese territory, and that the control of industrial conditions, especially in Chinese factories, is *ultra vires* under the Land Regulations, the amendment of which requires Chinese approval. Sound economic policy, they insist, requires that the right of factory control in all areas be vested in the National Government. The Council, on the other hand, is determined to maintain its administrative integrity, and the licensing plan makes this possible. Months of protracted negotiations have failed to produce a compromise solution acceptable to all parties.

This question is akin to those of courts and taxation. Barring the complete abolition of foreign control of Shanghai, it poses the problem of developing a working relationship between the foreign and Chinese authorities in a matter which is of more than local concern. Chinese law might be enforced through the Chinese courts in the case of native factories in the Settlement. But foreign factory owners enjoying extraterritorial rights—notably British, Japanese, and Americans—are outside Chinese juris-

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diction.[17] To demand that factory control wait upon the abolition of extraterritoriality, given any alternative solution, is to sacrifice the welfare of Shanghai labor in the interest of national prestige.

An alternative solution presents itself in the licensing scheme of the Council, assuming the good faith of that body. In the various courts of the Settlement, the Council proposes under its by-law to enforce a set of regulations paralleling the Chinese factory law as administered in Chinese areas. Such a device avoids the impasse over extraterritoriality and the administrative integrity of the Settlement. On the other hand, in a matter of national economic policy it puts veto power in the hands of a foreign-dominated local body closely affiliated with powerful employer groups. It may be observed, however, that at present the Nanking government is not itself militantly proletarian in character.

In the course of negotiations in 1933, the Chinese authorities modified their position and proposed a joint factory inspectorate responsible to a joint board over which the two administrations (or three, if the French authorities should agree) should have equal control. The Council, however, while willing to report systematically to the Ministry of Industries and to employ Chinese inspectors trained and nominated by the Ministry, refuses to limit its independence by acceding even to joint control in the Settlement. Their reluctance to recognize Chinese authority in the Settlement in matters of factory regulation, as well as taxation, is based in part on a strong suspicion, borne out by certain recent acts of the Nanking government, that such power would be used to discriminate against foreign business interests and in favor of Chinese. This is perhaps the greatest obstacle in the way of settlement. As in the case of the External Roads dispute, the factory problem unfortunately had not met with even a temporary solution prior to the outbreak of Sino-Japanese hostilities. Since 1931, the Nanking régime has obviously been in no position to force the issue, assuming that it so desired. Political uncertainty throughout China has brought procrastination on all sides. Meanwhile a minority of rapacious employers continue to set com-

[17] It has been suggested that foreign courts be empowered by suitable legislation to enforce the Chinese factory law. Whatever the merits of this scheme as a means of progressively abolishing extraterritoriality, it would probably involve long delay in instituting factory regulation, and could be sabotaged by one recalcitrant foreign Power.

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petitive standards of cruel exploitation in the mills of Greater Shanghai—a situation for which the Treaty Powers as well as China must accept responsibility.

The Japanese attack on January 28, 1932, as already indicated, injected fresh complications into the problems of Shanghai. However much Chinese resented the use of the "neutral" Settlement as a base of attack by the Japanese forces, they were compelled to reflect upon the possibility of Japanese control as an unwelcome alternative to international rule. The foreign authorities found themselves in the awkward position of inviting the Japanese navy to defend its assigned sector (which included a piece of the Chinese municipality) and then being unable to prevent the Japanese forces either from usurping the authority of the Municipal Council in their defense area or from launching large-scale military operations into Chinese territory. Notwithstanding the bitterness engendered among Chinese by the enormous destruction of life and property, the Japanese by force of arms eventually created a neutralized zone around the city and reduced the strength of the organized boycott. The old "Free City" proposal of Taiping days was once more revived in certain quarters. If Japan had this in mind in suggesting a conference of the Powers to consider the protection of foreign interests at Shanghai and elsewhere in China, it was dropped when the Powers declined to participate in deliberations from which China was excluded.

Since the liquidation of the Shanghai venture, Tokyo has centered its positive policy north of the Yellow River. The Japanese community in Shanghai has been rebuilt, however, and is pressing for further representation in the Settlement administration. By conscientiously voting *en bloc*, the Japanese rate-payers, whose number is reported as approximately 800, wield an important influence in municipal affairs. The status of the Settlement being removed temporarily from the forefront of diplomatic issues in the Far East, affairs at Shanghai have tended to drift. Japanese aggression in the North has given Nanking more pressing problems to deal with and has produced a fundamental divergence in the policies of the Powers. Mr. Justice Feetham's proposals looking toward the ultimate reconstitution of the Settlement as a self-governing municipality under a charter from the National Government have been filed away in obscurity. In 1931, they failed to satisfy the Chinese; in 1934, the foreigners seem content to let

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matters rest as they are. The economic and social plight of Shanghai's growing proletariat and the failure of the Settlement régime to cope with the numerous problems arising therefrom recall Professor Tawney's shrewd observation: "Political forces in China resemble Chinese rivers. The pressure on the dykes is enormous, but unseen; it is only when they burst that the strain is realized."[18] Politically and economically, the status of Shanghai is one of unstable equilibrium.

IV

There is a tendency to over-emphasize the international political aspects of Shanghai. Foreign control is likely to obscure the significant rôle being played by this treaty port in the *internal* drama of present-day China. In the long run, perhaps, the most significant change in the forces underlying political issues in Shanghai is the increasing participation of a growing community of Chinese in the foreign way of life. This westernizing tendency may be observed, for example, in occupational habits, whether those of the business man or factory worker, in economic and social organization, in political ideas, in domestic arrangements, and in standards of food, clothing, housing, and recreation. Especially pertinent for present consideration is the fact that Chinese business leadership is asserting itself in industry, commerce, and finance. The growing importance of Chinese banks and Chinese ownership of real estate in the foreign settlements testifies to the increasing predominance of Chinese capital, a tendency accentuated by the flight of capital from the interior. Without implying that inequality in wealth and economic power were unknown in traditional China, it may be noted that the introduction of capitalism in treaty port areas is producing large Chinese vested interests and the social groupings characteristic of capitalistic economies.

The rise of Chinese capitalism and a capitalist class has at least three effects on Shanghai politics. In the first place, the dominant position of the foreigner in business enterprise in China is being undermined. A parallel, although more threatening, development in Manchuria contributed a motive for Japan's conquest of that region. Foreign investments in Shanghai, however, are mainly non-political in origin. Here, at any rate, the growth of Chinese business interests does not reduce the economic stake of the Powers in China, but—to borrow Nathaniel Peffer's phrases—shifts it from "business in China" to "business with China." Consequently, the

[18] *Op. cit.*, p. 161.

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national economic interests presumably pursued by the foreign Powers become less closely identified with the property interests of foreigners resident in treaty port centers like Shanghai.

Secondly, piecemeal modification of foreign control in the International Settlement as already undertaken is facilitated. The foreign authorities are less reluctant to share political control with a wealthy Chinese owner and employer class whose interests and attitudes have much in common with their own. It is also easier to coöperate with and to exert pressure upon a national or regional régime which depends for its survival upon the support of that class. On the other hand, recent boycotts show that the Chinese commercial classes can be highly nationalistic in temper as well, especially when native industries stand to profit from such an attitude. Many public-spirited Chinese, furthermore, while conceding the great value to China of foreign capital and technical assistance, are impressed with the bitter lessons experienced by their country in the dangerous political consequences of foreign investment.

Finally, industrialization and westernization in treaty port areas, by increasing the differentiation of social classes and geographic regions in China, raise a host of new domestic problems. This occupational and geographical specialization brings increasing interdependence and hence in certain respects is a unifying force. At the same time, it produces new antagonisms of class and region. The process is furthest advanced in Shanghai—"the spear-head thrust into China's flank by her latter-day barbarian invaders from overseas."[19] It creates issues of local and national economic policy which are settled by aimless drift in the absence of conscious control. What is to be the rate, location, and type of industrialization? Do political and economic considerations call for a large measure of self-sufficiency? What degree of regulation or ownership of industry is the state to undertake? Is *laissez-faire* capitalism to proceed unchecked in its rapid creation of large and congested slum areas in Shanghai? How are the financial resources of Shanghai to be put to the task of rural reconstruction? To what extent is national and regional governmental policy to reflect the interests of agrarian, wage-earner, or industrial capitalist classes? Domestic questions of this type are of paramount importance. Foreign control of Shanghai, prestige values aside, is significant mainly as it bears upon them. In this sense, we may say of Shanghai that the

[19] Arnold J. Toynbee, *Survey of International Affairs, 1931* (London, 1932), p. 460.

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fact of primary importance is the rôle of the city as the great urban center of China; its foreign status is secondary.

The political evaluation of Shanghai in recent years brings these issues into clearer perspective. With Chinese business men cooperating more or less harmoniously with foreign *taipans* on the Municipal Council, and with the removal of racial discrimination in Settlement policy, political arrangements in Shanghai cease to be viewed solely as international disputes over treaty rights. Municipal taxation and expenditure, factory control, and national taxation, for example, become more obviously the battleground of social classes or of treaty port and hinterland. Treaty rights and national sovereignty may continue, however, to offer convenient camouflage for foreigner and Chinese alike. It is much simpler, of course, to conceive of the internal and external politics of Shanghai as a contest between two parties, China and the Powers. Such an interpretation is increasingly unreal.

The differentiation of class and region resulting from the impact of Western culture on the treaty port areas is a gradual process. So long as the laboring class of Shanghai is quiescent, and so long as a feeble Nationalist Government is closely allied with the commercial classes of the treaty ports, a frontal conflict directly involving Shanghai is unlikely. The rise of a strong proletarian or agrarian movement, however, or the emergence of an indigenous political movement rejecting the Western tendencies of the treaty ports, might develop a broad cleavage. There is no reason, moreover, to assume that the influence of Soviet Russia as it penetrates eastward across Asia is at an end. The possibilities of open conflict along these lines can be observed in the split in the Kuomintang in 1927 and the prolonged civil war which has ensued between Nanking and the Communists. In any such internal cleavage, Japan and the Western Powers (with the exception of Russia) would doubtless range themselves on the side of the treaty port capitalism. It has already been observed, however, that such an alliance is not altogether a secure one. Nor do the Powers themselves present a picture of harmonious coöperation at present. Shanghai, with its international controls and its interaction of Western and Chinese cultures, reveals these various tendencies at work during the past decade. Its politics, whether viewed internationally or domestically, is a manifestation of these underlying economic and social currents whose resultant force will shape the future of China.

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Toward a Consistent Foreign Loan Policy. The Securities Act of 1933 marks the inauguration for the United States of what seems to be a consistent policy toward private loans to foreign governments. In view of the continued importance of such loans in our foreign relations, it appears appropriate to consider in some detail how the new policy differs from the old, and what its implications are likely to be.

It is unnecessary in this journal to discuss the individual cases of friction arising from private loans to foreign governments during the last fifty years. What concerns us, rather, is the cause of such friction. *Immediate* causes were to be found sometimes in the encouragement by the State Department of American loans to particular governments; sometimes in intervention by the State Department in the interest of American creditors; sometimes in the establishment by the United States of extensive financial controls; or sometimes in the sending of armed expeditions to take over the control of customs houses to assure continued payment of foreign obligations. One underlying cause, however, was far more important than any one of these immediate causes, namely, the absence of a consistent policy toward American creditors of foreign governments. This, in turn, was due to the failure of those in authority (or perhaps of the American people themselves) to decide once and for all what the relation should be between our government and those of its citizens who were creditors of foreign governments. The failure to make this decision rendered it impossible to outline any broad and consistent policy which would have determined automatically the course of government action in particular instances.

Given the present world political system in which states are the only persons in international law, the government of the United States must, on occasion, represent its citizens through diplomatic channels, and it will therefore always take some interest in the welfare of foreign bondholders. It is, however, a major question of state policy to determine how great this interest shall be. There appear to be two broad alternatives. The government may decide to be actively interested in the financial transactions of its citizens and maintain a continuous and lasting supervision over all phases of the process. If this alternative is selected, it is conceivably the function of the federal government to advise investors as to the wisdom of loaning money to certain governments[1] and, in accordance with this advice, to assist investors in case of

[1] Senator Hiram Johnson at one time proposed that "a Foreign Loan Board, consisting of the Secretary of State, the Secretary of Commerce, and the governor

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difficulties in securing payments. In some instances, government approval of a loan might be made dependent upon the establishment of a financial control by the United States similar to that created in Haiti.[2] This policy has the obvious advantage of permitting control over the making of loans, and thus of discouraging loans most likely to require intervention.

On the other hand, the government may decide, in the main, to leave the creditor citizen to his own devices and come to his assistance only in certain well defined situations. Under this alternative, creditors would not make loans on the assumption that assistance would be forthcoming in the event of default, and would therefore be more cautious. Intervention would be resorted to in only the most flagrant instances of denial of justice.

Whichever of these alternatives is selected, it should be adhered to consistently, for shifting from one to the other opens pitfalls which it is impossible for any government to avoid.

Even a casual acquaintance with our past foreign loan policy reveals that neither a policy of control nor one of *laissez-faire* was consistently followed. Due to constantly changing personnel in responsible positions, and to the fact that pressure brought to bear upon the State Department was conceived in terms of particular ends desired rather than in the interests of consistent policy, there was a marked inconsistency in the actions of the government. Thus, while in general the government pursued a policy of *laissez-faire* as to the circumstances and terms under which citizens invested their capital abroad, it often adopted a policy of intervention and control when these loans proved to be unsound.

This inconsistency in policy was of little consequence where loans were made to governments usually in the habit of meeting their obligations. However, it bore fruit in an ever-increasing international friction as the public indebtedness of less provident debtor governments (notably those in Central America and the Caribbean and some in South America) increased and the occasions for intervention by our State Department

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of the Federal Reserve Board, . . . should approve or disapprove of virtually all foreign loans." W. T. Winslow, "The Securities Bill and Foreign Investments," 236 *No. Amer. Rev.* (1933), 243–244.

[2] In contemplating the establishment of such controls, we must not be misled by the unhappy experience of the United States in its relations with some of the defaulting governments of Central America and the Caribbean. The financial controls established in these countries in the past have been unsatisfactory in some cases because expert personnel for the administration of controls was lacking; in other cases because financial conditions in the debtor countries had been allowed to go too far before the controls were established; or again, failure was due to the lack of a clear-cut, well-understood policy by the United States, so that intervention came only at the insistence of the creditors, and was looked upon as evidence of an imperialistic policy.

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multiplied. It made inevitable the charge that financial chaos had been deliberately fomented by American bankers, and it lent plausibility to the belief that we were using the financial breakdown of the debtor countries as a means of extending our political control. Had the United States consistently pursued a policy of *laissez-faire* and refused from the start to come to the assistance of its creditor citizens, or had it consistently pursued a policy of control and supervised all phases of the creditor-debtor relationship, these results might have been avoided.

In what respects does the present policy of the United States appear to be different from that formerly pursued? The Securities Act of 1933[3] and the Administration's actions with respect to it laid the foundation for the present policy. Title 1 of the act aims to assure investors of a complete and accurate set of facts concerning any securities offered for sale. Foreign government bonds are specifically included among the securities covered by the act.

Title 2 of the act provides for the creation of a Corporation of Foreign Security-Holders "for the purpose of protecting, conserving and advancing the interests of the holders of foreign securities in default. . . ." This Corporation is to be controlled and managed by a board of directors of six members, appointed by the Federal Trade Commission; and the Reconstruction Finance Corporation is authorized to loan the Corporation not to exceed $75,000. The powers of the board of directors are broad enough to permit it to carry out the general purposes of the Corporation, but the Corporation is enjoined (section 210) from acting or pretending to act for the Department of State or the United States government. The Corporation is to come into existence only upon issuance of an executive order by the President.

While Title 1 of the act merely assures the investor of an opportunity to secure facts upon which to base his own judgment and thus promises a *laissez faire* policy on the part of the government, Title 2 contemplates direct governmental participation in protecting the interests of investors by the creation of the Corporation of Foreign security-Holders. Had the Administration chosen to create the corporation in question, the effect would inevitably have been to associate the government closely with the collection of foreign bonds in default. While the act specifically denies the right of the proposed Corporation to represent the government of the United States, debtors as well as creditors very probably would have been led to believe that a real connection existed between the State Department and the Corporation. The Securities Act therefore embodied the same inconsistencies in policy that have heretofore prevailed. This fact was apparently recognized at the White House, for despite consider-

[3] Public Act No. 22, Seventy-third Congress (H. R. 5480).

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able pressure from various sources, the President did not issue the order putting this part of the act into operation. On the contrary, efforts were directed toward creating a wholly private bondholders' protective corporation which should have no connection whatever with the government. The result of these efforts was the Foreign Bondholders' Protective Council, Inc.,[4] incorporated under the laws of the state of Maryland. The purpose of this Council is to protect American interests in connection with foreign bonds in default and to coördinate the efforts of various other American groups which are seeking the same end. It is a private agency, having no official connection with the United States government, and therefore differs materially from that contemplated under the Securities Act.

From its action, we may judge that the Administration has adopted a *laissez-faire* policy, and wishes to put the investor on his own responsibility in purchasing foreign bonds and in negotiations with debtor governments when complications arise. It may be argued that the requirements of Title 1 suggest some measure of control. However, this control is purely negative, and it applies equally to domestic and foreign securities. Investors may believe that they can rely upon registration of securities with the Federal Trade Commission for evidence as to their soundness, but a few years of experience should teach them the limits of federal supervision.[5]

Two further steps in the direction of a consistent *laissez-faire* policy have been taken. Both reduce the likelihood of forceful intervention for the protection of creditors. In his address before the Woodrow Wilson Society on December 28, 1933, President Roosevelt said that "the definite policy of the United States from now on is one opposed to armed intervention."[6] The words of the President were translated into an obligation of the United States in the Convention on Rights and Duties of States,[7] ratified by the Senate on June 15, 1934, and approved by the President on June 29, 1934. Article VIII of this Convention provides: "No state has the right to intervene in the internal or external affairs of another." Article XI provides that "the contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force,

[4] *N.Y. Times*, Oct. 20 and 21, 1933.

[5] Some aspects of this problem, as affecting both domestic and foreign securities, are discussed in Fred Rodell, "Regulation of Securities by the Federal Trade Commission," 43 *Yale Law Jour.*, pp. 272–280.

[6] Pamphlet containing the address published by the Woodrow Wilson Foundation (New York, 1934).

[7] Signed by the delegates to the Seventh International Conference of American States at Montevideo, December 26, 1933. Treaty Information Bulletin, No. 54, Mar., 1934, p. 33.

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whether this consist in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a state is inviolable and may not be the object of military occupation nor of other measures of force imposed by another state directly or indirectly or for any motive whatever, even temporarily."

Summarizing the events of the last eighteen months, we see that through the Securities Act, the creation of the Foreign Bondholders' Protective Council, the President's address of December 28, and the Convention on Rights and Duties of States, the present Administration has (1) assured the investor of adequate information about his securities; (2) provided the investor with an agency other than the State Department through which to negotiate with debtor governments; (3) limited very sharply the need for granting diplomatic assistance; and (4) declared its opposition to a policy of armed assistance.

It is probably too early to frame any judgment as to the results of this foreign loan policy. Yet a few suggestions as to its probable significance in the field of international relations seem permissible.

(1) The general effect of the new policy should be to reduce to a minimum the irritation brought about by diplomatic intervention in behalf of creditor citizens. (The recent intervention of the State Department with the government of Germany in behalf of Dawes—and Young—loan creditors and the insistence of our government upon safeguarding treaty rights in connection with the evacuation of Haiti illustrate the degree and type of intervention likely to continue in the future.)

(2) The ending of armed intervention should mean more peaceful and forthright relations with Latin America in particular. The constant fear of landing expeditions and the suspicion that we were extending our hegemony in this hemisphere have stood in the way of effective coöperation. No one familiar with our past relations with debtor countries in the Caribbean and Central America will suppose that this change can be brought about over night. But the negotiations for the evacuation of Haiti and the ending of the Platt Amendment are evidence, at any rate, of good faith.

(3) Finally, this new approach may open the way to the development of some form of international organization to supervise loans to backward countries. As noted elsewhere,[8] the chief obstacle to the growth of such an institution in the past has been the sense of obligation on the part of sovereign states to go to any lengths to assist creditor citizens. The gesture here made by the United States may well lead to the adoption of similar policies by other states. There may then follow the creation of

[8] See my article, "National and International Control of Foreign Investments," in this REVIEW, Aug., 1931.

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an international organization to operate controls and supervision over defaulting or less provident states.

WALTER H. C. LAVES.

Hamilton College.

The Control of Patents in Private and Public Services. Policies of large corporations relating to the control of patents taken out by employees naturally vary in detail with the different companies. Certain general policies, however, are usually followed.[1]

Some companies place no restrictions upon the taking out of patents by their employees, but as a general rule they retain the shop right to manufacture for themselves any articles which they can use. These companies pay the cost of securing the patent for the employee, and the patent is taken out in his name. The company allows the employee to sell the patent to any one he chooses, but he grants to his company the right to use the idea.

The great corporations which maintain large research laboratories take definite steps to control all inventions and discoveries made by their employees. At the time of employment, the situation is carefully discussed and it is clearly explained that since the individual is employed for research work, all product of that work is considered property of the company. Many corporations embody this in a written contract signed with the employee at the time of employment. As a general rule, the sum of one dollar is paid to the employee for each process or discovery patented. Corporations very seldom pay royalties to employees, but when an advancement or promotion or increase in salary is considered, the number and value of patents of the employee will be a determining factor. Many instances arise in which the discovery of the employee does not fall within the field of activity of the corporation. In a case of this nature, the majority of corporations release all rights to the invention, leaving the individual free to take any steps he desires in connection with it.

Some cases have arisen in which an employee has left the service of a corporation, and then has attempted to secure a patent on an invention or discovery made during his time of employment. Corporations protect themselves against such practice by several means. As a general rule, the contract signed between the individual and the corporation at the time of employment provides that the corporation shall have title to any patent secured by the employee within six months after leaving the corporation's service. Some contracts extend the terms of the provision to two years. This applies, of course, to those patents relating to the

[1] Information on private services was secured largely by correspondence. For obvious reasons, the names of corporations are not given.

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work performed by the corporation. In the next place, corporations employ patent attorneys who handle all patent matters. When a discovery is made on which a patent might be secured, the employee or his chief immediately notifies the patent attorney. Thus, the matter is taken out of the hands of the employee. Also, the employee, while doing his research, will keep memoranda concerning his work. If he should attempt to patent any process or discovery after he leaves the employ of the company, the corporation will have tangible evidence that it really has claim to the title. A particular case was brought to the attention of the writer in which a certain manufacturing company in a Western city depends for its existence entirely upon the manufacture of articles patented by the head of the company as the result of research done in the laboratory of another corporation. The latter company uses the articles it desires without payment of royalties, and in case it wishes to buy the articles from the manufacturing company headed by its former employee, it can do so at a preferential price.

The securing of patents and copyrights by employees of private and independent colleges, universities, and similar institutions would likewise come within the category under discussion. So far as the writer can learn, there is no control by such institutions over the patents and copyrights secured by their employees. This question has been discussed by the administration and faculty of some of the large institutions, but it appears that there is no attempt to control the patents or copyrights secured.

Only three states have taken any steps to control the patents of their employees, i.e., Wisconsin, Ohio, and Iowa.

Wisconsin has taken no definite legal action, and there is no official attempt to control patents of employees. However, an organization has been developed at the state university which is interested in inventions and discoveries made at that institution. This organization can best be described by quoting from its first report to the board of regents.[2] "The plan under which the Foundation was organized was presented to the April meeting of the board of regents in 1925, and upon approval by the board, a corporation known as the Wisconsin Alumni Research Foundation was incorporated November 14 of that year. To quote from the charter of that organization, its purpose is: 'To promote, encourage, and aid scientific investigation and research at the University and to assist in providing means and machinery by which the scientific discoveries and inventions of the staff may be developed and patented and the public and commercial uses thereof determined; and by which such utilization may be made of such discoveries and inventions and patent

[2] *Report of the Trustees of the Wisconsin Alumni Research Foundation to the Board of Regents of the University of Wisconsin*, June 22, 1931, p. 1.

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rights as may tend to stimulate and promote and provide funds for further scientific investigation and research within said University'." This is a non-profit organization. "Patentable discoveries by various professors and students of the University are treated as their own property unless the funds for the research project are derived from some private source and some particular arrangement concerning this phase is designated beforehand. All patents turned over to the Foundation are assigned to us so that we may exercise complete control over their commercial development. The patentee is given fifteen per cent of the net avails from the income. . . . All of our funds derived from patents are used for the furtherance of research."[3]

Ohio has a statute enactment which applies to the discoveries and processes developed at the engineering school of the state university.[4] One of the functions of the engineering school is to carry on research in coöperation with the business houses of the state. Any state corporation has the privilege of utilizing the research department of the engineering school to carry out certain studies. Any patents which result from the research are to be taken out in the name of the university, even though the cost is paid for by the individual company. However, the university, through its board of trustees, has the power to sign contracts stipulating that the company get the results of any discovery. In the absence of a contract, the patent automatically goes to the university.

Iowa has gone much farther than any other state in the control of patents. This control applies to discoveries, inventions, and copyrights of students, instructors, and officials of institutions of the state. An act passed in the special session of the general assembly this year gave the board of education the power to take over all patents or copyrights secured by students, instructors, or officials of the state, with the consent of the inventor and at the discretion of the board.[5] The board may incur all necessary expenditures for securing the patent or copyright, which then becomes the property of the state of Iowa. Royalties and earnings are credited to the funds of the institution in which the patent or copyright originated.

The control of patents in the domain of the national government is a departmental matter. In order to develop uniformity in the manner of handling inventions and patents in the various government departments and independent establishments, and in the respective rights and advantages of the government and its employee-inventors, an interdepartmental patents board was created in 1922 and attached to the

[3] Letter from the director of the Foundation to the writer. For some of the earlier accomplishments of this Foundation, see W. S. Kies, "Science Goes to Market," *Review of Reviews* (September, 1931), p. 42.

[4] Sections 7961–65, General Code of Ohio.

[5] House File No. 209, an amendment to section 3921 of Code of 1931.

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office of the Chief Coördinator of the Bureau of the Budget.[6] The board's function was to advise the Chief Coördinator on matters pertaining to patents owned by the government and to inventions made and patents secured by persons in government service relating to devices, apparatus, methods, or processes in the use or development of which the government was interested. One of the main activities of the Board was the consideration and preparation of a measure to be proposed to the Congress to provide for uniformity in the control of patents in the several departments. However, when the Federal Coördinating Office was abolished in 1933,[7] the interdepartmental Patents Board went with it, and no congressional action was taken which would give the national government a uniform system of control of patents.

The Department of Agriculture furnishes a good example of the departmental control of patents. This department controls the patents of its employees by administrative regulations which provide that any employee making a discovery shall report the same to his chief of bureau, who in turn reports to the secretary. Determination will then be made as to what measure of control, if any, the Department should have or exercise in the patenting and subsequent administration of such discovery or invention.[8] If the invention is outside the scope of the employment of the individual, he may apply for a patent through the Department without the payment of a patent office fee. The government, however, receives the right of free use of the invention.

Thus it will be seen there is a definite control of patents by the national government and by private industries. In the national government, the control is by departmental regulations, whereas in private industries it is by contractual arrangement. The broad general policies are similar. The control exercised applies to patents within the field of employment of the individual, but does not apply to patents secured outside this field. However, there may be a shop right to the idea when the individual secures his own patent. This is true both in the national government and in private corporations. The states, with the exception of Ohio and Iowa, have taken no official action to control patents. Control in Ohio is nominal and applies only to the engineering school of the state university. Iowa has taken a definite step toward control of patents, but the legislation was of the "emergency" variety and may or may not represent a permanent policy.

JAMES A. GATHINGS.

Bucknell University.

[6] Executive Order No. 3721, August 9, 1922.

[7] Executive Order No. 6166, June 10, 1933.

[8] *Administrative Regulations of the Department of Agriculture*, Paragraphs 686 and 687.

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Judicial Interpretation of the Executive Veto in Michigan. The convention which assembled in the territory to draft a constitution for the proposed state of Michigan[1] adopted without opposition a modified executive veto. The provision was a verbatim copy of Article I, section 12, of the New York constitution of 1821,[2] with a stipulation appended expressly extending the veto to "every resolution to which the concurrence of the senate and house of representatives may be necessary."[3] These provisions, with three changes, were readopted in the revision of 1850. The first change, although partially one of arrangement, recognized a distinction between joint and concurrent resolutions, excluded the former from the scope of executive interference, and consolidated the two sections into a concise statement of the veto power.[4]

The other two alterations were of greater importance. In 1850, in all of the states except Louisiana, the veto could be overridden, upon reconsideration in each of the two houses, by one of three methods: (1) a simple majority vote, (2) a majority of all members *elected*, or (3) a two-thirds majority of all *present*. The third was the Massachusetts and New York rule which had been adopted in Michigan in 1835. Because of the unfortunate management of the financial affairs of the young state—attributable in part to the unwillingness of the legislature to accept the advice of the governor—the second convention abandoned the New York rule and adopted the Louisiana practice, which required, to overcome executive disapproval, affirmative action of two-thirds of all the members elected to each house.[5]

The third change, in extending the time in which the veto might be exercised beyond legislative adjournment, gave the governor more opportunity to consider the merits of legislation enacted in the final days of the session. The revised constitution provided: "The governor may approve, sign, and file in the office of the secretary of state, within five days after the adjournment of the legislature, any bill passed during the last five days of the session, and the same shall become a law."[6]

The principal provisions of the constitution of 1850 were readopted in 1908 and remain as the basis of the general veto power in the state.

[1] May 11, 1835.

[2] *Michigan Const.*, 1835, Art. IV, sec. 16.

[3] *Ibid.*, Art. IV, *sec.* 17. Cf. *Missouri Const.*, 1820, Art. IV, sec. 11.

[4] *Michigan Const.*, 1850, Art. IV, sec. 14.

[5] *Loc. cit.*

[6] *Loc. cit.* The Michigan constitution was the first to carry this provision. J. A. Fairlie, "The Veto Power of the Governor," in this REVIEW, Vol. 11, p. 479 (Aug., 1917).

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The revision of 1908 produced one important addition, i.e., a provision authorizing the governor "to disapprove of any item or items of any bill making appropriations of money embracing distinct items."[7]

Neither the unquestioned incorporation of the original veto provision nor the series of subsequent alterations was indicative of the provision's potentialities as an instrument of legislation. The plan of government framed by the convention of 1835 anticipated that the determination of state policy would be reserved exclusively to the senate and house of representatives; and, although executive approval was required for all legislation, there was no intention that the governor be authorized to nullify the clear intent of a majority of the members of the two houses. The veto was regarded as a proper check upon legislative abuses, but was not designed to make him an integral part of the legislative branch. It was then an executive rather than a legislative power, to be exercised only in exceptional cases or in unusual circumstances.

This conception of the veto power prevailed in practice as well as in theory through the early years of statehood. Before the close of the nineteenth century, however, in order to curb increasing legislative abuses, the governors were compelled to abandon this narrow interpretation of their power and seized upon the veto as an instrument for the determination of state policy. In eighty per cent of all vetoes since 1909, the governors have justified their negatives in terms of public policy and expediency. Although public approval of this broader use of the veto and legislative acquiescence in ultimate executive control have thoroughly established the governor as a component part of the legislative branch of government,[8] his constitutional status remains essentially executive. Consequently, under the traditional doctrine of the separation of powers, he is restrained from exercising functions other than executive except in such cases as are expressly authorized in the constitution.[9] "The veto is a legislative function," said the supreme court, "although it is not affirmative and creative, but is strictly negative and destructive. It cannot be exercised by the executive except through constitutional grant. . . . This historical and constitutional division of the powers of government forbids the intrusion, otherwise than by explicit language or necessary implication, of the powers of one department to another."[10] Because of

[7] *Michigan Const.*, 1908, Art. V, sec. 37.

[8] Less than three per cent of all bills vetoed since 1909 have become law contrary to executive disapproval and less then ten per cent have been proposed for reconsideration.

[9] "The powers of government are divided into three departments: the legislative, executive, and judicial. No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this constitution." *Michigan Const.*, 1909, Art. IV.

[10] Wood v. State Administrative Board, 255 Mich. 224 (1931).

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this lingering faith in the doctrine of separation, the court has felt constrained to interpret the language of this grant of power as restrictive in character; yet in only one instance, the item veto, has the legislative position of the governor been weakened through judicial construction.

Several cases involving the veto power reached the supreme court during the nineteenth century, but a direct question requiring judicial determination did not arise until 1895. In that year the court was called upon to determine the extent of the governor's authority to approve of legislation subsequent to adjournment of the session. Since the validity of the veto was generally attributed to the presence of the legislative body prior to 1850,[11] Michigan governors had followed the then settled custom of signing scores of bills in the closing hours of the session. This practice, which demanded executive action without time for adequate consideration, threatened to defeat the purpose of the veto. A partial remedy was effected in the revision of 1850, when the governor was specifically granted a period of five days after adjournment in which to approve "any bill passed during the last five days of the session."[12] For nearly half a century, this provision was interpreted in strict accordance with the language of the grant. "Governors and legislatures were careful to see that all bills and joint resolutions which were passed before the last five days were disposed of, by approval or otherwise, before final adjournment."[13] In fact, after 1873 the legislature remained in session for three or four days for this purpose; in all, not more than three measures enacted before the last five days, and these, the result of oversight, were given executive approval after the close of the session. This narrow construction was supported in an opinion of the attorney-general in 1895, but was overruled by the supreme court later in the same year. In reaching its conclusion, the court refused to consider the provision apart from its context and held that the convention had intended that "all bills were to be signed within ten days after passage, except those passed during the last five days, which were to be disposed of within five

[11] See *Opinions of the Attorney-General*, Michigan, 1895, pp. 275–276. This report is based upon a California court opinion. "In approving a law, he [the governor] is not supposed to act in the capacity of the executive magistrate of the state, whose duty it is to see that the laws are properly executed, but as a part of the legislative branch of the government. This power is a *unit*, though distributed; and the parts can only act in unison. Whenever a part ceases to act, the whole becomes imperative." Fowler v. Pierce, 2 Cal. 165. However, the Michigan court intimated that it would not have followed the California opinion had it been presented with a similar question. "If we were construing the provisions of the earlier constitution, we should therefore feel justified in concluding that the governor might sign a bill within ten days after its passage, though the legislature should have meantime adjourned." City of Detroit v. Chapin, 108 Mich. 138 (1895).

[12] *Michigan Const.*, 1850, Art. IV, sec. 14.

[13] City of Detroit v. Chapin, 108 Mich. 136 (1895).

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days after adjournment."[14] This interpretation afforded the governor ample time for the consideration of all bills enacted prior to the final five days of the session, but did nothing to extend the period for consideration subsequent to adjournment.

Since a large part of the entire program reaches the governor on the final days of the session, the limited period after adjournment in which approval may be granted is inadequate for executive consideration. As the result of a legislative practice instituted early in the present century, the governor is now allowed a period of from two to three weeks in which to dispose of the measures enacted by the houses. The legislature, upon completion of its program, sets a date for final adjournment and adjourns temporarily. In the interim, legislative details are supervised by the secretary of the senate and the clerk of the house, who are authorized to present for executive approval the bills passed in the closing days of the session. These measures are presented at intervals during the recess period but early enough to insure that all bills will reach the governor at least ten days prior to the date of final adjournment. This practice has greatly improved the legislative process in that the period for executive consideration has been extended, the governor is compelled actively to veto all measures of which he disapproves, and the legislature is assured an opportunity to reconsider all vetoed measures. However, the practice raised for judicial determination a rather fine point in constitutional construction.

The constitution provides that "if any bill be not returned by the governor within ten days, Sundays excepted, after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevent its return, in which case it shall not become a law."[15] This provision afforded no difficulties prior to the advent of the practice of temporary adjournment. If the executive, with the legislature in session, failed to return a bill to the house of origin, within the specified period, the same became law; and, as a matter of political expediency, objectionable measures were frequently allowed to become law in this manner. But if the return were prevented by adjournment (adjournment *sine die*), the bill was definitely defeated. Thus, the governor was able to disclaim responsibility through inaction. Neither of these practices has prevailed in Michigan since the adoption of the present constitution, and there is little possibility that either practice will be revived;[16] in fact, in view of existing circumstances, the governor is definitely precluded from exercising the pocket veto.

[14] *Ibid.*, pp. 141–142.

[15] *Michigan Const.*, 1908, Art. V, sec. 36.

[16] Three measures have become law without executive approval: Governor Ferris refused to take definite action on two occasions, and another bill was declared to

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There are reasons to believe that the practice of temporary adjournment, supported by a strict, but perhaps rather unusual, construction of another clause of the provision, might seriously have interfered with the legislative authority of the executive. The constitution requires the governor to return, with his objections, all vetoed measures to the house of origin; but since ninety per cent of all negatives come at a time when the houses are not in session, a strict adherence to this provision is physically impossible.[17] Failure to comply with this procedural requirement is fatal; a measure is deemed not to have been vetoed until actually returned to the house of origin.[18] Since the pocket veto is operative only after adjournment *sine die*, and if temporary adjournments prevented the actual return of objectionable measures as prescribed by the constitution, then every attempted veto could be defeated by the simple expediency of temporary adjournment by the originating house.[19]

This important question was before the supreme court in 1931. The court ruled that, to make the veto effective, disapproved measures must actually be returned to the house of origin within the prescribed time. But, fortunately, the justices refused to recognize any possible legal consequences of temporary adjournment and held that the "return of a bill may be made to a house although it is not in actual session."[20] This construction is necessary, the court said, "to render the constitutional plan complete in operation and prevent uncertainty and confusion as to the important question of when a bill becomes a law."

No procedural difficulties are introduced as a result of this interpretation. The constitution provides for one regular session of each legislature, at the beginning of which the houses are completely organized, and this organization remains, by legislative practice, unchanged until the time of final adjournment. Thus "temporary adjournments do not disrupt or interrupt the legislature or an organized house. Each constitutes an organized entity throughout the session. So the governor may transmit the bill to the originating house through its officers, and thus unequivocally evidence his disapproval."[21] Nor does this construction limit or abridge

have become law when Governor Sleeper's intended veto came one day late. Since 1909, only two governors have "pocketed" measures.

[17] Only ten per cent of bills disapproved between 1909 and 1934 were vetoed during the working days of the legislative sessions. All others came on the final day or in the interim between temporary and final adjournments.

[18] *Opinions of the Attorney-General*, Michigan, 1911, pp. 283-284. "An essential element of a veto is that the governor 'shall return it with his objections to the house in which it originated.' " Wood v. Administrative Board, 255 Mich. 230.

[19] "Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the legislature may then be in session." *Michigan Const.*, Art. V, sec. 18.

[20] Wood v. State Administrative Board, 255 Mich. 231.

[21] *Loc. cit.*

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the constitutional rights of the legislature to accept ultimate responsibility, as that body retains its jurisdiction throughout the period of temporary adjournment to override the executive veto. This reasoning of the court is valid in any case, whether the temporary adjournment be that of the originating house only or of both houses. The constitution recognizes no legal consequences from adjournment other than adjournment *sine die;* and, in fact, the language of that document supports the view that the legislature may adjourn only without day.

In reaching these conclusions, the court rejected the doctrine of the Okanogan case[22] as inapplicable under these circumstances, because "we cannot hold that the originating house may destroy the executive power of veto by preventing return through its adjournment." The adoption of any point of view other than that expressed by the Michigan court would have given rise to a situation not contemplated by the constitution. The opinion reads, in part:

"The purpose and object of the constitution justifies, and, in our opinion requires, the construction that it is only adjournment without day of the legislature which prevents return of a bill to the originating house and calls into operation the provision for 'pocket veto.' It will be conceded that the constitution intends to preserve such powers of the governor [veto and pocket veto] without possibility of abridgement by the legislature; and further, that it purports to declare the affect, in each instance and without exception, of the failure of the governor to exercise the power of active veto within the stated time and of the action of the legislature in preventing an opportunity for active veto by adjournment. . . . Return of a bill on veto is not merely a matter of ceremony between executive and legislative branches of the government. It is an act of the executive (a) unequivocally to evidence his disapproval of the bill, and thereby (b) to confer jurisdiction on the legislature to make the bill a law in spite of his disapproval. . . . The provision that a bill shall finally fail if the legislature, by adjournment, prevent such return is, in practical effect, a sort of penalty imposed upon the legislature for depriving the governor of the power of active veto. Where the adjournment is one which neither prevents the act of return nor requires the imposition of the penalty, the provision is not applicable."[23]

The first legislature to assemble under the present constitution re-

[22] Okanogan Indians v. United States, 279 U.S. 655. The gist of the opinion is: "It follows, in our opinion, that under the constitutional mandate it [the vetoed measure] is to be returned to the 'house' when sitting in an organized capacity for the transaction of business, and having authority to receive the return, enter the President's objections on its journal, and proceed to reconsider the bill; and that no return can be made to the house when it is not in session as a collective body and its members are dispersed" (p. 683).

[23] Wood v. Administrative Board, 255 Mich. 229–232.

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quested an opinion from the attorney-general concerning the obligations imposed upon that body to itemize appropriation bills. In answering the inquiry, that official said: "While this provision [the item veto] does not in express terms impose upon the legislature the duty to separate the different items in appropriation bills, it certainly was contemplated by that provision that the legislature should so frame those bills that it will be possible for the governor to exercise the constitutional power conferred upon him. . . . If the legislature does not see fit so to itemize the appropriation bills passed by it, I do not know that there is any remedy."[24]

However well intentioned the legislature may have been in seeking this advice, the fact remains that it has been remiss in the drafting of appropriation bills. Consequently, in order to effect an economy program, Governor Osborn (in 1911) interpreted the provision as conferring upon the executive constitutional authority to reduce items as well as power to strike items from appropriation measures. This interpretation of the item veto was not at once challenged, and the practice of scaling down was continued until 1931, when the issue was raised for judicial determination.[25] Several questions were certified to the supreme court: (1) Can the governor reduce specific items in an appropriation bill?; (2) If the court holds that the governor cannot reduce items, then the following questions are to be decided: (a) Is such an attempted partial veto of specific items a nullity, or (b) Does it veto those items, or (c) The tax clause not being correspondingly reduced, does it invalidate the whole appropriation bill?"[26]

Basing its opinion upon the doctrine of strict construction discussed above, the court answered the first question in the negative. "The language of section 37 [the item veto] must be read with all intendments against enlargement beyond its plain words. In this state, the general veto power never has included, and does not include, the authority to modify a bill or disapprove it in part. . . . The power of the governor under it [sec. 37], like the general veto power, is to approve or disapprove. Neither the language of the section nor its purpose carries necessary implication of power to reduce an item in amount, nor, in the ordinary use of the words, would such a construction be justified."[27]

[24] *Opinions of the Attorney-General*, Michigan, 1909, pp. 123–125.

[25] So generally accepted was this practice that the governors did not even go to the trouble of returning partially vetoed bills to the houses for reconsideration. Such bills were filed, along with approved measures, in the office of the secretary of state and appropriations made accordingly.

[26] Wood v. State Administrative Board, 255 Mich. 225–226.

[27] *Ibid.*, p. 225. The court accepted as ruling authority: Strong v. People, ex rel. Curran, 74 Cal. 283; Fairfield v. Foster, 25 Ariz. 146; Fergus v. Russel, 270 Ill. 304; Peebly v. Childers, 95 Okla. 40; Mills v. Porter, 69 Mont. 325; Fulmore v. Lane, 104 Tex. 499; and dismissed Commonwealth v. Barnett, 199 Pa. 161, with the

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Having thus declared that the authority of the governor under the item veto did not extend to the reduction of items in appropriation bills, the court quickly disposed of the second question: "Under the facts here, the action of the governor in reducing the items, being without warrant of constitutional power, was a complete nullity and did not affect the bill in any way, either as an approval or disapproval of any such items. But had the bill been returned to the originating house with such reductions, it would have constituted a veto of the objected items."[28]

In holding that the governor had exceeded his constitutional authority in reducing items in appropriation bills, the court in effect nullified the item veto. Since the governors were forced to resort to this practice through the refusal of the legislature to itemize their appropriations, the executive will no longer be able to curb extravagant expenditures as contemplated under the constitution.

HAROLD M. DORR.

University of Michigan.

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statement that the opinion "has been sufficiently criticized by the other courts, sometimes under the guise of distinguishing it, to render unnecessary a statement of further reasons for not accepting it." *Loc. cit.*

[28] *Ibid.*, p. 226.

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Early Administrative Phases of a State Liquor Store System. New Hampshire is the eleventh state to establish a system of state liquor stores. Other states may try the same solution of their liquor problem when legislatures meet in 1935. What are some of the initial administrative problems encountered in organization and operation of state liquor stores?

Before answering this question on the basis of New Hampshire's experience, it will be well to examine the political and legal background of the liquor situation in this state. New Hampshire was one of the so-called "drier" states. It had sampled a modified state prohibition in the latter half of the nineteenth century, liberalized this through licensing in the first part of the present century, and finally returned to prohibition before national prohibition was adopted. The state appeared reasonably well satisfied with prohibition until the national tide turned so strongly against it about 1930. By 1933, the legislature reflected this change in the passage of a beer law, provision for a vote on repeal of the Eighteenth Amendment, and favorable action in the lower house for the establishment of a state retail system. The senate, however, did not act on the latter proposition. A few months later, the electorate of the state voted in favor of national repeal. From then on, agitation increased for some system of legalized hard-liquor sale. This was stimulated by legalization in neighboring states. Finally, in February, 1934, Governor Winant appointed a committee of twenty-one prominent citizens to study the liquor problem. Several weeks later this committee reported in favor of a state liquor store law. A special session of the legislature was called, and after discussion a bill embodying most of the recommendations of the governor's committee was passed and became law on June 5, 1934.

The framers and backers of this law appear to have had these objects in mind: (1) the satisfaction of a normal, unstimulated demand for liquor; (2) the destruction of bootlegging; (3) temperate use of the lighter liquors; (4) a modest revenue for the state; and (5) the elimination of politics from the liquor business.

Briefly, the law provides that the manufacture, sale, and transportation of alcoholic liquor shall be under the control of an appointed state commission, the commission to control the licensing of on- and off-premise sale of alcoholic beverages under six per cent as in the beer law of 1933. State stores are the exclusive agencies for the sale of off-premise liquor, although medicinal liquors obtained from the Commission may be sold by licensed druggists under a prescription system. First-class licensed hotels can sell liquor by the glass with meals and in guest rooms. Ac-

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credited licensed clubs may sell by the glass to members for convenience only, and not for profit. Liquor and beer advertising is restricted. Towns and cities may adopt local option, subject to the right of the Commission to grant first-class hotel licenses anywhere in the state.

On the whole, the law provides ample power for administrative authorities. Primary enforcement responsibility is placed on the Commission, where it should be. Wide discretionary power is conferred on the Commission to make regulations, establish stores, grant licenses, and provide for carrying out the law.

However, there are some weaknesses in the law from the standpoint of sound administrative principles. It provides for an administrative commission of three who shall give full time and be paid $4,000 each per annum. A large minority of Governor Winant's committee had pointed out the advisibility of setting up a commission as a board of directors with the duty of hearing appeals, passing general regulations, and choosing a general manager to administer the law. It was pointed out that this plan would give a commission duties for which it is best fitted, that it would fix responsibility for appointments and efficient operation, and that it would be the best way to divorce liquor sales from politics. However, weighed against this is the possibility of a poor manager and danger that a commission might not appreciate its proper limits and duties. Under the present personnel of the Commission, and during the short period of trial, the administrative commission has worked satisfactorily. Time may throw a clearer light on this.

A more pronounced defect is the provision that terms of commissioners shall be three years. The governor's committee had proposed a six-year term. A longer term would certainly insure greater independence from political pressure, the possibility of attracting better men, and a more efficient performance of duties.

Another defect is the requirement that any sales agent shall have been a resident of the city or town where the store is established for at least six months prior to appointment. This has a narrowing influence in the choice of the best personnel. Since the sales agents must be law enforcers as well as agents, it is debatable whether partiality to some customers may not outweigh the value of familiarity with the community.

Initial Steps of Organization and Operation. The commission of three was appointed on June 13, although formal organization did not take place for almost a week. The chairman had been chairman of the beer control board. He had been secretary to Governor Winant, chairman of the Republican state committee, and a former state senator. His experience proved invaluable in the period of organization and in preventing false steps that might alienate legislative support. Prior to assuming the chairmanship of the Commission, he resigned the Republican committee

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chairmanship, thus setting an example for subordinates. A second member had been associated for several years with the executive of the Amoskeag Paper Company of Manchester. He contributed valuable business experience. While he is a Democrat, he has never been active in politics. A third member, a recently retired dean of Dartmouth College, resigned eleven days after appointment. The position had not been filled by the middle of November.

No sooner had the Commission been organized than the governor sent the first two commissioners to Pennsylvania, where the state store system had been longest in operation, and to Virginia, which was just in the period of initial organization. There is little doubt that this tour of observation was extremely valuable in acquainting the commissioners with the problems and mistakes of other states, and it was of additional value in giving the commissioners an opportunity to understand each other before they were buried in administrative details. They returned with the belief that the Commission had to work as a unit if the plan was to succeed.

During the period while the two commissioners were away, things were in a state of disorganization. The remaining commissioner had resigned. The big hotel men were demanding immediate shipments of liquor because the tourist hotel season in New Hampshire is short. Hundreds of applicants for jobs with the Commission were anxious to press their claims, scores of salesmen with brands of liquor and types of equipment jammed the corridors, and the mail was staggering. To handle all this, there were four office girls.

About the time the commissioners returned, two temporary appointments were made that helped to relieve pressure. One man with experience in personnel work was made personnel officer and adviser of the Commission.[1] All applicants and applications for positions were handled through his office. The second man was an expert in administration who acted as an executive secretary to the chairman. It was this man's business to advise on matters of general administration, make out the agendum, and handle people and problems assigned to him by the chairman. The most immediate matter before the commissioners was the ordering of liquor for the larger hotels. Red tape was cut, temporary licenses were issued immediately, and within forty-eight hours the temporary needs were filled.

While the Commission was tackling the problem of constructing a new system, it was necessary to administer beer licensing. Then there were politicians and others who wasted plenty of the commissioners' time by demanding the immediate establishment of the stores. But this could not

[1] The appointee was the author of this article. *Man. Ed.*

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be done in a few days, as the following discussion of particular administrative problems will show.

The System of Distribution. Temporary storage quarters for incoming liquor had to be established immediately, because all liquor for the hotels had to be purchased from the Commission. Arrangements were entered into for a warehouse in Concord, the most centrally located city in the state. In a short time the building was in shape. New Hampshire is a small state, and the probable number of stores was so small that one warehouse will probably continue to be sufficient. It was decided after investigation into the cost of buying and operating trucks that it would be cheaper to distribute by contract with a private trucking company. This was done on the basis of competitive bids. The plan has worked well so far.

Choice of Brands. This was a task that was pressing as well as difficult. Because of the experience of one of the states which they had visited, the commissioners were apprehensive lest some mistake be made in selecting brands. They tried to see as many reliable salesmen as possible. This was time-consuming, although the commissioners believe it well worth while. Well known and reliable brands were finally selected. An attempt was made to have a wide price range and a reasonably large number of brands. The state was fortunate in having a buyer's market when it went into the business, in contrast to some of the states which started their store systems in the post-repeal scarcity.

Financial Policy. The law reads that the price of liquor sold by the state shall "be sufficient to pay for the cost of the liquor purchased, plus a proportionate part of the overhead expense of the Commission, plus an additional charge; all to be determined by the Commission." It is the policy of the Commission to keep the retail price down to the point at which it is hoped to destroy the bootlegger's trade. At present, the retail price is below that in near-by states having private sale and is on a par with prices charged by the Vermont state stores. Of course it is expected to make a profit, which will be transferred to a special state debt retirement fund.

As soon as the first stores were established, the Commission instituted an inventory and accounting system whereby each store reports daily to the Concord office sales and stock on hand. Each store must have its goods inventoried at the close of the day, because the manager does not know when the traveling auditor will inspect the books. The store manager sends his orders for additional supplies through the central office. The warehouse has a daily check on all incoming and outgoing liquor according to brands.

The Commission has from the first adopted the cash basis of payment to firms from which it purchases. This gives the state any advantage

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which accrues from discounts. The legislature appropriated an operating fund of not to exceed $250,000 for initial expenses. This will be repaid within a short time.

Store Sites. Everyone with a vacant store site wanted to bring it to the attention of the Commission. Had this been possible, no end of time would have been consumed listening to applicants and to their political friends. To head off such a situation, the Commission appointed a real estate expert to pass on and investigate applications. His preliminary investigations were carried out quietly and thoroughly. From the few best locations in each town, the commissioners personally made the selection. Central locations conforming to the statutory requirement that no store should be located within three hundred feet of a church or school were selected. The state was fortunate, thanks to prevailing conditions, in obtaining suitable locations at very low rentals.

Store Equipment and Arrangement. The equipment problem was simplified by the experience of other states. All stores are equipped with practically the same steel shelving, cash registers, and counters. All are painted a cream color inside and green outside. "New Hampshire State Liquor Commission" and the number of the store are printed in gold lettering across the window. There is no other ornamentation. A space of about twenty feet before the counter is open to the patrons. On one side is a shelf, as in a post office, where the patron makes out his order. Above are the names and prices of all brands on hand. At the rear of the store is the manager's desk. Usually there is a basement for the storage of all liquor not on the shelves. All sales agents are provided by the state with a neat uniform of tan trimmed with green.

Selection of Personnel. Selection of the personnel, upon which so much of the success of the state store system depends, is a huge job, especially in a year of economic depression. Over 3,000 people applied for some seventy positions. The law favors local residents and requires that ex-service men be given preference if equally qualified for a position.

New Hampshire does not have a personnel or civil service system. Therefore any system which was of a competitive nature was somewhat of an innovation. But the Commission was determined to see that choices were made from the best available personnel on a competitive basis regardless of politics, religion, or personal influence. The personnel officer interviewed all candidates whose applications appeared to warrant it. The interview gave opportunity to acquaint the applicant with the standards and requirements expected. More specifically, each applicant was told that for the first six months the successful appointee would be on a probationary basis, that all employees would have their fingerprints filed, and that a system of bonding would be established. The place of honesty, courtesy, accuracy, and neatness was emphasized. Personal appearance,

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physical condition, age, and poise were noted. The burden of proving their essential qualifications was placed upon those who had had any previous connections with the liquor traffic or who had active political connections. On the basis of this interview, all applicants were graded and recommendations made for the future reference of the Commission. The commissioners, on their part, told applicants that they could not be considered until interviewed by the personnel officer. This fixed responsibility and relieved the Commission.

After the applicants were interviewed, the personel officer visited the various localities, where he investigated references and conferred with as many impartially minded persons as possible on the relative merits of applicants. A check-up was always made with law enforcement officers, and any serious delinquency in the record of an applicant meant elimination from further consideration.

Candidates interviewed made, on the whole, a favorable impression. A surprisingly large number stated that they did not use liquor in any form. Most of the applicants had had business careers until forced out during the depression. Few were receiving public relief. The number of college men applying was negligible, while about half were high school graduates. Most of the applicants were married men.

Of the sales agents appointed, the average age is about thirty-five. Retail experience is a general rule. However, only one-seventh have had any experience with selling liquor. Two out of the first thirty-six appointees are college men. Practically all the others have high school education. Less than one-sixth were employed at the time the job was offered to them. No inquiries were made in regard to political affiliations. However, the preliminary interview eliminated all political office-holders. Nationality had to count in three or four instances where there are large French-speaking populations. About half of the sales agents are ex-service men.

Wage Policy. New Hampshire is a state with very low wage scales for its employees. Therefore it was impossible, without disturbing the whole state-house wage scale and producing serious political repercussions, to establish salaries as high as they should have been in the liquor department. The initial yearly salaries for the most important classes are: sales managers $1,500, sales clerks $1,200, inspectors $1,500, the store supervisor $2,400, the warehouse manager $2,000, and the chief accountant $2,200. It was agreed that definite increases varying from $100 to $25 a year should be given each year for a period of five years. However, it is appreciated by the Commission that if times improve, the whole salary scale must be revised upward if the present satisfactory personnel is to be retained. All salaries must be passed upon by the governor and council.

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Store Operation. The first stores were opened on the week-end of August 17. They were overwhelmed with patrons. One store alone did a $3,500 business. Adding to this volume of business a group of clerks inexperienced in handling liquor and in working together, the difficulties can be readily appreciated. Of course, some customers expected chain store efficiency at the very start. The Commission could not guess the number of clerks required, and was anxious to avoid overmanning the stores. Before the first stores opened, the sales agents, due to lack of time, were given no systematic training. Later on, men from the first stores were sent to instruct the force of new stores before and shortly after opening.

The Commission sent out instructions to all sales agents. In these, agents are forbidden to hold political office, actively participate in local option campaigns, drink any liquor on store premises, smoke while on duty, recommend any particular brand of liquor, or contact any liquor salesman. Patience, courtesy, and tact are insisted upon. On the whole, the men are doing a good job in living up to these instructions.

The Commission has the right to establish store hours at its discretion. Week-day hours have been fixed from 10 A.M. to 6 P.M., except on Saturdays, when the closing hour is 9 P.M. Sunday sales are prohibited.

Each customer must sign his name on an order slip. Since the slips have not been opened to public inspection, little opposition appears to have developed. More time should be permitted before passing judgment on the value of this as an administrative device. There is no limitation on the amount that may be purchased at one time, except the discretion of the sales agent. So far, few individuals have ordered more than one to three bottles at a time. Some people may be, and are, refused if they try to repeat during the same day. All liquor must be paid for in cash, and this tends to keep down quantity orders.

At present, there are eleven stores open. With the exception of the state's largest city, no place has more than one. In order to open a new store, the Commission must be convinced that there is a demand and that the store will pay its way.

General Administrative Organization. When it became evident that the third commissioner would not be appointed for some time, the other two divided their duties—although in every important instance the Commission decided as a whole. With this qualification, the chairman has general supervision over the stores and over the accounting and audit department, and is in charge of the purchase of supplies. Reporting directly to the chairman is the store supervisor. The latter spends most of his time in visiting stores, advising managers, inspecting premises and stock, and aiding in the establishment of new stores. The junior commissioner has general charge of licensing, the collection of license fees, and the law enforcement office. Under a director of law enforcement there are some ten

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inspectors and investigators. So far, this general division of duties has greatly expedited the handling of the Commission's business.

Conclusion. The problems that are likely to be faced by the state store system in the next few months are, in addition to those mentioned, mostly political. There are groups which oppose a state store system on the ground that it is not liberal enough, or is entirely too liberal. In addition, the druggists, restaurant owners, small hotel owners, and advertisers want the law and its administration liberalized in the direction of their particular interests. Future events will have to show whether attacks from these quarters will diminish.

If the third member of the Commission is appointed, there will have to be a reapportionment of administrative duties. Also the unity and bipartisan character of the present Commission will be affected. But in spite of these difficulties, which should be surmounted, New Hampshire seems to have embarked upon a sound and conservative liquor control policy.

MILTON V. SMITH.

Dartmouth College.

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NOTES ON LOCAL GOVERNMENT

EDITED BY THOMAS H. REED
University of Michigan

The Municipal Bankruptcy Act (Sumners-Wilcox Bill). In February, 1933, during the closing days of the last "lame duck" session of Congress, Senator Fletcher of Florida introduced an amendment to the federal bankruptcy law under which insolvent municipalities might arrange a special composition of their debts with the consent of holders of a majority of such debts. This bill was introduced at the instance of officials of certain Florida municipalities. At about the same time, and in ignorance of the introduction of this bill, representatives of creditors of Florida and other municipalities visited Washington with the express purpose of investigating the possibility of securing federal legislation of this very nature. Considerable interest in the proposal was created in congressional and administration circles, and in the opening days of the new Congress which convened following the inauguration of President Roosevelt, Representative J. Mark Wilcox of West Palm Beach, Florida, introduced in the House a bill which in effect was a companion measure to the Fletcher bill above referred to. During the spring of 1933, this bill, which had been referred to the House judiciary committee, was the subject of several exhaustive hearings, and after having been amended in many particulars and finally rewritten, it was favorably reported by the judiciary committee as the Sumners Bill,[1] H. R. 5950. The measure came up for debate on the floor of the House, where it was passed on June 9, 1933. An unsuccessful effort was made to secure action on the bill in the Senate at that session.

Upon the reconvening of Congress in January, 1934, the drive for the enactment of the bill was renewed, and, following hearings before the Senate judiciary committee, the measure was favorably reported in somewhat amended form and passed during the first week of May. The Senate and House conferees reached an agreement on the bill promptly, and the President approved it on May 24, 1934, as Public Act No. 251 of the 73rd Congress; and the act became operative immediately.

The sole purpose of those who originally sought this legislation and were active in the campaign for its enactment was to secure legal machinery to compel minority creditors of a municipality to assent to a plan of adjustment acceptable to a majority of creditors and to the debtor municipality. No such machinery in the form of state laws existed, or could exist, because municipal debt readjustments necessarily require

[1] After Hatton W. Sumners, Texas, chairman of the House judiciary committee.

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some impairment of the obligation of outstanding contracts, and any state law undertaking to legalize the impairment of contracts would be in conflict with the federal constitution.

As a matter of fact, no attempt had ever been made to enact federal bankruptcy legislation for municipalities, it having been rather generally believed that Congress lacked power to deal with the subject. Following the introduction of the Fletcher and Wilcox bills, many well-known authorities, including a special assistant attorney-general of the United States, came to the conclusion that Congress does have power to enact bankruptcy legislation for municipalities, and at this date there is little doubt in legal circles that the present municipal bankruptcy amendment would be upheld by the United States Supreme Court even had it not been enacted as an emergency measure and its period of effectiveness limited to two years.

When the effort to secure this legislation was initiated, municipal debt default conditions had reached a serious stage, and those who had been attempting to work out debt readjustments had found that in almost every instance they were blocked by dissenting minority creditor groups. During the long delay pending the final approval of the bill, the default situation became very much worse and virtually no progress was made in bringing about the settlement of municipal debt problems. The law has, at the date of writing, been in effect about six months. While the fact is that very few municipalities have taken advantage of the opportunity to petition the federal bankruptcy court for the purpose of having a debt adjustment plan made binding upon minority creditors, it is stated by bond attorneys and others who are very active in this debt adjustment work that the mere presence of the law on the statute books has resulted in breaking down the resistance of minority creditor groups to proposed plans of debt settlement, because these interests realize that if they do not go along with the majority, the municipality is now in a position to appeal to the federal court and, with its approval, proceed with its debt adjustment without danger of interference by minority creditors.

Opponents of the bill argued that it would be looked upon by municipalities as an invitation to evade payment of their debts. With one quarter of the two-year lifetime of the act already past, there is no evidence that any municipality will go into the federal bankruptcy court under the act except at the request of a majority creditor group with whom a final debt adjustment agreement, acceptable to both parties, has been reached. The testimony of experts to the effect that municipal debtors seeking to evade their obligations always shun the federal courts appears to have been sound in the light of actual experience with defaulting municipalities during the last six months.

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The Municipal Bankruptcy Act applies to any municipality or other political subdivision in the United States—to use the language of the act, any "taxing district." So far as these districts are concerned, the act is purely permissive. A further important point is that it is expressly provided in the act that no plan shall be finally confirmed by the court until the district is authorized by its own state laws to take such action as is necessary to carry out the plan. The act was also carefully drawn so as to preclude the possibility of interference by the federal court with the political or governmental powers of the district.

Without attempting to set forth in detail the procedure to be followed under the act, it may be pointed out that as a condition precedent to the filing of a petition, a taxing district must secure the assent of creditors owning not less than 30 per cent in the case of drainage, irrigation, reclamation, and levee districts, and not less than 51 per cent in the case of all other taxing districts, in amount of the bonds, notes, etc., affected by the proposed plan. Provision is made for creditors holding 5 per cent in amount of indebtedness to oppose any proposed debt settlement. Before the bankruptcy court may confirm a plan of readjustment, approval is required of creditors holding 66⅔ per cent in the case of drainage, irrigation, reclamation, and levee districts, and 75 per cent of the debts in the case of all other districts. Confirmation of the plan by the court is to be made if the court is satisfied, among other things, that the plan is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors.

SANDERS SHANKS, JR.

The Bond Buyer.

Virginia's Progress in County Government. The first concrete step looking toward the improvement of Virginia's archaic and obsolete system of county government was taken on June 19, 1928, when Section 110 of Article 7 of the state constitution setting forth the organization and government of counties was enlarged to provide that "notwithstanding the provisions of this article, the general assembly may by general law provide for complete forms of county organization and government different from that provided for in this article, to become effective in any county when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon." In pursuance of this constitutional change, the general assembly of 1930 provided for the creation of a permanent commission on county government, to be known as the Virginia Commission on County Government. The duties of the commission, as defined by law, were to draft a general law setting forth optional forms of county government to be submitted to the general assembly of 1932; to analyze and interpret

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statistics as to the cost of county government; and to study the various governmental activities in which the several counties are engaged with a view to informing the citizens of the counties as to the progress, effectiveness, and cost of such activities.

A report, *The Organization and Management of County Government in Virginia*, embodied the fulfillment of the first duty of the commission. Here the present status of county government was set forth and its chief defects analyzed. Summarizing its findings,[1] the commission characterized the organization of county government in the state as inevitably inefficient, wasteful, and irresponsible: inefficient because of a cumbersome, over-elaborate, and disintegrated administrative mechanism; wasteful because of overlapping, obsolete, and useless offices and agents; irresponsible and undemocratic because the people have no direct representative body with sufficient power to plan and direct the policies of the county for them, and whom they can justly hold responsible for the success or failure of administrative officers whose varied activities they are unable to follow directly.

The fee and commission system of compensating county officers was regarded as a serious defect. Another outstanding weakness was found in the economic inability of some counties to support any adequate or satisfactory unit of government, owing to a lack of sufficient area, population, and taxable wealth to support the services demanded by the modern community. Further defects were discovered in the lack of an orderly financial procedure and in the archaic and incompetent systems of rural justice, under which the most numerous classes of cases were tried by justices without the training or ability to render decisions that were either just or intelligent.

To remedy these conditions, the commission proposed a well-rounded program of legislation the essential parts of which were enacted into law by the general assembly. Part of this legislation paved the way for a thoroughgoing reorganization of county government and the removal, by one stroke, of the major defects of these governmental units. The rest was designed to effect certain improvements in the administrative procedure of the existing county organization. Space will permit consideration of only the first type of legislation.

The Optional Forms Act of 1932.[2] The reorganization act of 1932 sets up two complete forms of county government, designated respectively as the *county executive form* and the *county manager form*, either of which may become effective in any county when approved by the qualified voters thereof.

[1] *Report of the Commission on County Government to the General Assembly of Virginia, December, 1931*, p. 78.

[2] *Acts of Assembly*, 1932, Chap. 368.

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The county executive form, embodying a slight modification of the manager idea, is designed to meet the needs of counties of various sizes and conditions. Under this plan, the entire legislative and administrative authority in the county is vested in a county board of supervisors of not fewer than three nor more than seven members, to be elected, one from each magisterial district, by the qualified voters of the entire county. The county board thus determines the policies of the county, enacts local legislation, levies taxes, makes appropriations, and directs and controls in a general way the county's administrative activities.

The board is authorized and required to appoint a county executive—a full time officer who may, in the discretion of the board, be the head of one or more of the departments of county government. The chief duty of this officer is to act as the administrative head of the county. He is required to carry out the policies determined by the board, to coördinate the affairs of the county, and to see that the proper administrative procedure is installed and enforced. He is required to prepare the budget and to make monthly reports to the board concerning the activities of the various departments and the financial condition of the county.

The board is further empowered to appoint, upon recommendation of the county executive, all administrative officers and employees of the county except the county clerk, the commonwealth's attorney, and the sheriff, who under the act remain elective.

Provision is made for the regrouping and consolidation of all functions of the county into a small number of departments or divisions. To insure flexibility, and to render the plan adaptable to the needs of any county in the state, it is provided in both the executive form and the manager form that "any activity which is unassigned by this form of county organization and government shall, upon recommendation of the county executive (or the county manager as the case may be), be assigned by the board of county supervisors to the appropriate department. The board may further, upon recommendation of the county executive, reassign, transfer, or combine any county functions, activities, or departments."[3]

The county manager form differs from the county executive form in two major respects, both having to do with the appointment and compensation of officers and employees of the county. Under the manager plan, the manager appoints most of the administrative officers of the county and fixes the compensation, subject to approval by the board of supervisors, of all those appointed by him. Under the executive plan, the board of supervisors, as previously pointed out, appoints, upon recommendation of the executive, all officers of the county except the

[3] *Code of Virginia*, 1932 Supplement, Sec. 2773–n10.

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clerk, sheriff, and commonwealth's attorney, who remain elective under both plans, and fixes the compensation of all officers and employees of the county, including the three elective officers.

In brief, both of these plans provide for the appointment of all county officers in the administrative service of the county except the three named; both plans place all county officers and employees on a salary to be fixed either by the board of supervisors or the manager with the approval of the board, and therefore effect complete abolition of the fee system as a method of compensation; both plans provide the board of supervisors with a responsible executive agent having the power and the responsibility for the efficient conduct of all the administrative activities of the county which the board has authority to control.

It should be pointed out that an act of 1930 applicable only to Arlington county provided for that county a partial or limited county manager plan.[4] This law leaves untouched the major elective officers of the county such as the treasurer, commissioner of revenue, clerk, sheriff, and commonwealth's attorney. Neither the manager nor the board of supervisors has any effective control over these officers. It is apparent, therefore, that except for the provision of a manager, there has been little change in the administrative structure of this county.

Popular Response to the Legislation of 1932. Since the enactment of the Optional Forms Act of 1932, referenda on the plans therein provided have been held in five counties. In two of these, the county manager plan was defeated and in one the executive plan was defeated. In Henrico and Albemarle counties, the county manager plan and the county executive plan, respectively, were adopted and have been in legal effect since January 1, 1934, although court action, necessitated by the refusal of certain officers of the old system in both counties to surrender and vacate their offices, postponed the actual operation of the new plans for approximately three months.

The New Plans in Operation. In both Henrico and Albemarle counties, substantial improvements have been effected under the new plans. In Henrico, a reduction of 26 per cent in the general county levy was provided in the new county budget; adequate provision was made for caring for the previously incurred indebtedness of the county, which seems not to have worried the previous administration; services have been expanded or improved in practically every department with no increase in the aggregate expenditures of the county.

In Albemarle, a reduction of more than 40 per cent in the cost of handling the financial department alone has been effected through the abolition of the offices of treasurer and commissioner of revenue, and consolidation of the functions thereof in a department of finance under

[4] *Acts of Assembly*, 1930, Chap. 167.

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the direction of the executive. A reduction of more than 30 per cent in general county administration, which does not include schools, has been effected. In general, improvements in administrative procedure and in positive governmental services have been noted. In Arlington county, substantial economies and improvements in administrative service have been realized through the efforts of a capable manager, in spite of the structural defects of the plan in effect in that county.

In each of these counties, there is observed a revival of popular interest in local government. The people have confidence in the new system, not only because it is more efficient, but also because they realize that they now have a means of holding the local authorities definitely responsible for the success or failure of their government.

GEORGE W. SPICER.

University of Virginia.

State Operation Saves Money in North Carolina. More functions have been transferred from the local governments to the state in North Carolina than in any other state, and they are being supported without ad valorem taxation.

Schools. Ten years ago the state was appropriating $1,250,000 a year from its general fund to help defray the cost of the public schools in those counties least able to bear the burden alone. In 1925, the appropriation was increased to $1,500,000; in 1927, to $3,250,000; and in 1929, to $6,500,000. In the last-mentioned year, the operating cost of the public schools was about $26,000,000; thus the state was bearing about one-fourth of it. This was from other sources of taxation than property, for there had been no property tax for state purposes since 1920. As the depression deepened and property values fell, it became apparent to the legislature of 1931 that owners of property must be given still greater relief. Hence it provided for full state assumption of the minimum constitutional term of six months, with the counties contributing only the proceeds of a tax of 15 cents on each hundred dollars of assessed value. But this program failed to work out satisfactorily. Not only did many local districts fail to raise taxes for an extension of the term beyond the minimum of six months, but the state itself accumulated a deficit of nearly $13,000,000 in the biennium ending June 30, 1933. Despite the deficiency, the state removed the 15-cent tax on property and at the same time assumed responsibility for the operation of the schools for eight months. To finance such a program, business, income, and franchise taxes were increased and a general sales tax was imposed. The annual appropriation for the state-wide term of eight months was fixed at $16,000,000, compared to $17,500,000 for a six-month term in the preceding biennium.

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It must be admitted that much of the reduction in school costs was effected through salary cuts. Teachers are paid according to a state-wide salary schedule, the maximum salary for a class-room teacher now being $90 a month and the minimum $45. This is for white teachers; the amounts are considerably less for colored teachers. A principal with 20 teachers and four years' experience gets $175 a month. These salaries are for eight months only. North Carolina is not proud of these low salaries and does not intend that they shall remain at this level. Indeed, there is every prospect that they will be increased appreciably next year.

However, not all of the saving effected has been due to salary reductions. When the state took over the schools, all district lines were obliterated and new and larger districts were created. The number of administrative units was reduced from 2,225 to 867, the new district lines being drawn without regard to political complexities or the distribution of taxable wealth. The state has a very complete system of school transportation, and under state supervision, with better maintenance of buses, this cost has been reduced from $2,300,000 to $1,700,000. The cost of coal has been reduced from $600,000 to less than $400,000, largely through inspection of furnaces and prescribed methods of operation.

This has not been accomplished without some sacrifice of home rule, and there have been protests. Some can be traced to dislodged school officials, some to merchants and salesmen whose business has been injured, but some also to parents and teachers who are genuinely distressed because the program appears to be one of "leveling down" rather than of "leveling up." The last-mentioned criticism would be a just one if the present policy were not liberalized as economic conditions improve. The new school law required that no special school tax be levied without a fresh mandate from the people, but no city was denied the right to vote on the proposition unless it was in default. Cities like Greensboro, Charlotte, and Winston-Salem held elections and the schools lost because depression psychology prevailed. It might have been unfair to put the schools on the defensive at such a time, but it undoubtedly prevented many units from continuing to spend beyond their capacity to collect the taxes. Better school systems have suffered seriously; many of the best teachers have resigned; the children have been the victims of false economy. But these conditions are not peculiar to North Carolina, and are perhaps less devastating and can be more easily repaired than would have been the case had not the state entered the picture. It will bear emphasizing that every school has operated for a full term, that every teacher has been paid promptly and in full, and that the credit of the state has been preserved. Now, with improvement in economic conditions, educational advance can be resumed.

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Roads. In 1931, North Carolina took over the maintenance of every mile of public road in the state, except city streets. This added about 46,000 miles of secondary roads to a state system which already had nearly 10,000 miles of primary roads. Since that time, certain main-traveled roads have been shifted from the secondary to the primary system, and a small mileage has been added to the secondary system. At the present time, the mileages in the two systems are 10,550 and 46,750, respectively. The cost of operating the two systems is kept separate.

In the first year under state maintenance, expenditures for construction and maintenance in the secondary system amounted to $7,280,601. This figure includes $900,000 spent in the construction of prison camps. In the following year (1932–33), the corresponding expenditure was $4,659,740, and last year it was $4,660,429. This, it will be observed, is about $100 per mile. During the last year in which the counties maintained the roads, they spent $8,233,000, according to the best analysis of county expenditures that could be made. This pronounced reduction is, of course, partly attributable to the lower price level which has prevailed in recent years. It is impossible to estimate how much the counties would have spent in these last two years. Perhaps they would have spent less than the state has spent, but it is almost certain that many would have let the roads deteriorate. It cannot be claimed that the state has spent all that could have been spent profitably. But it has been the policy to build up a balance in the highway fund in order that the state might serve as banker for the general fund. Last year, highway revenues exceeded expenditures by $5,815,000; and this was after $1,000,000 had been diverted (donated) to the general fund.

Convict Labor. One of the direct benefits of state maintenance of all highways is the opportunity that it affords for the wholesome and profitable employment of convict labor. The state has constructed 82 permanent prison camps, to which those who are employed on the highways return each night. These camps are equipped with shower baths; the food is well-balanced; there are facilities for recreation; and a doctor is attached to each camp. While discipline is necessary, there has never been a hint of such abuses as frequently prevailed in the county chain-gangs. Already this season, the camps have canned 147,000 cans of vegetables grown in the camp gardens. Last year, the cost of maintaining a prisoner was 48.58 cents per day. This covered food, clothing, hospitalization, guarding, and everything except interest on the capital equipment.

The prison division charges the highway maintenance division 80 cents a day for the labor that it uses. If convict labor is not worth 80 cents a day to the highway department, then of course it is supporting the state prison to the extent of this excess labor cost.

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Centralized Purchasing. In 1931, the state established the office of state purchasing agent, and all supplies and equipment used in the state institutions and in all the state departments are now bought through this agency, except only perishable foods and school textbooks. No estimate of saving would be ventured by the office, because it keeps no consolidated accounts. In fact, the agency handles no money; it simply receives periodic requisitions from the several departments and institutions, consolidates the orders, and asks for bids. The contracts are let to the lowest bidder, quality being considered, and the orders are broken down and shipped direct to the using agency. Payment is made by this agency.

Observations. To some people, these steps in the direction of state centralization may appear alarming. There is some protest in North Carolina. But, in the main, the transfer of functions from the county to the state is recognized as an economy. In the case of roads, the service has been improved along with the reduction in cost. In the case of the schools, sacrifices have had to be made during the present period of depression which it is hoped can soon be alleviated. The great desire on the part of almost everybody was a substantial reduction of property taxation, and that has been achieved. The counties of the state have been enabled to cut their tax rate from an average of $1.64 per $100.00 of assessed value in 1930 to an average of 88 cents last year. This is along with a reduction of about 30 per cent in the assessed value of property. Stated differently, county and school taxes borne by property have decreased from a peak of about $45,000,000 to not more than $20,000,000 at the present time. If this reduction has been achieved at the cost of some surrender of local self-government, most people seem satisfied with the exchange.

PAUL W. WAGER.

University of North Carolina.

The Michigan Amendment to Reorganize County Government. In 1929, and again in 1933, the Michigan house of representatives refused to submit to the voters comprehensive constitutional amendments for county reorganization which had been passed by the senate. In the special session of the legislature in 1934, a compromise amendment was passed unanimously by the senate, but this, likewise, was defeated in the house. Following the third legislative rebuff in five years, a state committee on county reorganization was called into being with the avowed purpose of placing an amendment on the ballot by constitutional initiative. The draft of the amendment was prepared by a sub-committee which included Claude H. Stevens, Divie B. Duffield, Mrs. A. R. Pribil, J. M. Leonard, Thomas H. Reed, Lent D. Upson, and Arthur W. Brom-

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age. Although the drive for signatures did not fire its opening gun until three months before the filing date, some 250,000 names were obtained—well over the number necessary to put the amendment on the November ballot. William P. Lovett led the campaign for signatures in the Detroit metropolitan area and Clarence V. Smazel supervised the work in all other sections. Committees of volunteers in the populous counties performed Herculean labors. The League of Women Voters and other civic, professional, and business groups worked with might and main during the intensive campaign. The daily newspapers of the state gave the amendment their all but unanimous support and indispensable publicity. The opposition has been in large measure an invisible one, although the rural weekly papers have not hesitated to voice their objections.

A single type of organization is at present imposed by the Michigan constitution upon all the counties of the state. Constitutional stipulations call for a long ballot and for cumbersome county boards of township and city supervisors. While the rural counties in northern Michigan seem willing to tolerate this system, the southern industrial counties are finding it increasingly unsatisfactory. The Wayne county board is now approaching a membership of 150, and boards of 30 to 50 members are the rule in other urban counties. The long ballot for the election of the clerk, register of deeds, treasurer, sheriff, prosecuting attorney, surveyor, *et al.*, leaves no room for a chief executive. No effective correlation between the board and administrative agencies is provided.

The newly-initiated amendment for county reorganization affords a remedy through the optional law system and county home rule. Paragraph (a) provides that the legislature shall by general law provide alternative forms of county government. No alternative plan can become effective in any county unless approved by a majority of the qualified electors voting thereon. This constitutional proviso would, at least, make possible the establishment in Michigan of an optional law system similar to that already operating in North Carolina, Virginia, Montana, and Nebraska. Optional alternative types of county government would be possible, but not necessarily probable.

In view of legislative recalcitrance in the matter of a constitutional amendment, it would have been political ineptitude to rest the case for county reorganization on the optional law system alone. Consequently, paragraph (b) authorizes the board of supervisors of any county, by a two-thirds vote, to submit to the people a plan of county organization. Further, a plan of county government may be initiated by petitions signed by registered voters to the number of ten per cent of the vote cast in the county for all gubernatorial candidates at the preceding election. When such petitions have been filed with the county clerk, he must

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submit the plan of government to the voters at the next general or special election if one occurs not less than forty days nor more than six months after the filing date. Otherwise he is to submit the plan at a special election to be held not less than 60 nor more than 120 days after the date when the petitions are filed. Amendments to any plan of county government adopted under this paragraph may be submitted in the same manner as plans of organization. No plan or amendment can become effective in any county without a majority vote of those voting on the question. If more than one plan, or two or more conflicting amendments, are adopted at the same election, then the one receiving the greatest number of affirmative votes is adopted. Paragraph (b) also provides for the publication of any proposed plan or amendment in a newspaper of general circulation, and for the filing of copies of any adopted plan or amendment with the secretary of state.

Paragraph (c) provides that any optional law passed by the legislature or any home rule charter or amendment thereto may "eliminate any constitutional county office and may provide for the number and manner of selection of the board of supervisors and of all other county officers and employees, for the powers, duties, terms, and compensation of all county officers, and for the creation, abolition, and/or consolidation of county offices." However, any home rule charter or amendment must provide for "the exercise by appropriate officers of the county of all duties and obligations now or hereafter imposed by law on counties and county officers." The amendment does not apply to circuit judges or judges of probate.

The proposed amendment, through the device of the home rule charter, will forestall legislative nullification of the reorganization movement. Failure of the legislature to enact alternative forms of government will not block progress. Counties may resort to the home rule device. Even if the legislature should adopt alternative forms, it is highly probable that the populous counties would want to experiment with home rule charters. Regardless of legislative action or inaction, the home rule principle would be available to counties.

The Michigan amendment illustrates the growing desire to break away from constitutional forms of county government designed for rural, agricultural conditions. The growth of urbanization has made the county an urban as well as a rural problem. A uniform system of county organization created by the state constitution and predicated upon rural conditions will not do for the urban counties of today. Only through such amendments as that proposed in Michigan can this problem be solved. The experience of Ohio in 1933 showed that this type of amendment will precipitate rural opposition in defense of the old order and urban demand for a change. This split has been obvious in the campaign for the adoption

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of the Michigan amendment. Since county organization must meet the needs of such diverse conditions and populations, it seems clear that it should be a flexible institution and not a rigid constitutional mandate. While this may be clear to the political scientist, it is equally apparent that the urban voter must be aroused to the issue and that the fears of the rural dweller must be allayed. The Michigan amendment is designed to give the urban counties a chance to reorganize, while the rural counties may stand pat if they choose to do so.[1]

ARTHUR W. BROMAGE.

University of Michigan.

Local Government Progress in California. *The County Executive Plan.* The county executive charters of San Mateo and Sacramento counties went into operation in July, 1933, with a full set of elective officials under the old constitutional and statutory provisions. Although the county executive took office at this time, the charters will not be in full force until January, 1935, after eighteen months of operation in the transition period. Both counties have shown marked improvement during this transition period. It is not necessary to point out the details of adjustments in the fiscal and structural operation during this time. However, the centralization of services in the engineer, director of health and welfare, and controller or auditor showed substantial savings in unit and comparative costs of operation.

In San Mateo county, a number of friendly suits were brought to test the provisions of the charter which created a qualification board to examine the applicants for the position of county executive, the consolidation of all road work in the engineer, the power of the board of supervisors to remove officers appointed by the county executive, as well as the power of the board to appoint to the position of county executive one who had been the employee of a public utility corporation. The charter provision creating the qualification board was declared

[1] The county home rule amendment was defeated. Incomplete but representative returns were as follows: yes, 333,000; no, 422,000. The amendment appeared on the ballot with five other amendments. Four of these clearly deserved defeat. A fifth, calling for the non-partisan election of judges, was a matter of opinion. Toward the close of the campaign, fourteen state-wide organizations, in an effort to defeat four of the amendments, urged the voters to say "no" to all. Some of these groups had previously supported county home rule, but abandoned it in the closing weeks to prevent confusion. The voters responded by defeating every amendment on the ballot. In number of affirmative votes, county home rule ran second to the non-partisan election of judges, but the other amendments were overwhelmed two, three, and four to one. Wayne (Detroit) and Oakland (Pontiac) counties gave county home rule a majority. The amendment ran well in Kent (Grand Rapids), Genesee (Flint), and Jackson (Jackson) counties. Majorities against the amendment piled up in the rural counties.

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invalid because justices of the superior court are prohibited from performing any except judicial duties under the constitution of the state. The case concerning the consolidation of road work was watched with much interest by seventeen other counties which had created the position of county engineer and removed all road work from the administrative powers of the board of supervisors. This removal of political power by the centralization of road funds and jobs is one of the most important steps forward in the reconstruction of our county governments.

Sacramento county has been quiet and apparently contented under its new charter provisions. The incumbent county surveyor was named to the position of county executive, and the transition from the old to the new plan is being made without serious objection. In both counties, there have been some indications that more of the administrative officers should have been brought under the executive control. This was attempted in the proposed charter for Santa Clara county which was defeated in February of this year. In this charter, the county executive was to be the controller and to have complete charge of fiscal and personnel operations of practically all of the departments of the county.

Both of these charters follow the essentials of the plan proposed by the committee on county government of the National Municipal League. They are apparently well received in other parts of the state, as is evidenced by the amount of study in different counties looking to some change in the existing legal setup. San Mateo county is a part of the San Francisco metropolitan region and will be included in the various studies which are being made for a simplification of the governmental units in that area. It faces pressure from San Francisco for consolidation with that city and county. The construction of the San Francisco-Oakland bridge is bringing the matter of metropolitan simplification much to the fore on both sides of the bay. Experience with the county executive plan and a general examination of the results of the simplification study in Los Angeles have convinced many who are interested in this matter of the necessity of a detailed and thorough reorganization in the San Francisco Bay region.

Governmental Simplification in Los Angeles County. A plan for voluntary gradual absorption of functions of local areas into a central metropolitan government is provided in a preliminary report of the Committee on Governmental Simplification of Los Angeles County. The committee found in its study 454 taxing agencies within the limits of the county. The larger part of these are single-service, or functional, governments. There are 44 municipalities, 151 school districts, 30 fire districts, 42 sewer districts, 96 lighting and maintenance districts, and 90 miscellaneous districts. This indefensible multiplication of government areas brought about a strong demand for some plan which would consolidate

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the governmental structures or the like functions of the various governments. Los Angeles county has experienced a type of functional centralization for about twenty years. A majority of the municipalities within the county have contracted with the county government for tax assessment and collection and public health service. Charities and the supervision of weights and measures for the city of Los Angeles are handled by the county. Many studies and reports have been made, but no plan has been as comprehensive or as well received as the one proposed this year.

The solution for this region is comparatively simple in that the entire group of governmental units is within the county boundaries and can be observed with the eye from several prominent points within the area. There is no complication of county or state lines. Los Angeles county has had a home rule charter since 1912 and probably exercises more governmental functions than any county in the United States. Individual studies were made of each taxing area from the viewpoint of political structure and functional operation. There was found to be a very large difference in the political structure of the 44 cities, some under home rule charters and others under the sixth-class law. However, as would be expected, there was a notable similarity in the functions performed by these cities, as well as by various corresponding units in the unincorporated areas. The committee felt that some plan could be devised in which the metropolitan area should be considered as a unit. A central metropolitan government was proposed, headed by a council of fifteen representatives elected at large on a scheme of proportional representation (if this can be made constitutional in this state) for terms of four years. This metropolitan legislature was to select a chief administrator, who would appoint the heads of the staff and control bureaus and the functional departments. Each local incorporated area would retain its legislative body as at present or as proposed by the committee, but its administrative departments would be gradually abolished as the local council decided to have each particular service operated by the metropolitan administrative authority. The unincorporated or rural areas would be formed into convenient groups, with local councils, similar to the incorporated councils, to advise the metropolitan legislature on the needs of their respective communities. This plan, with its voluntary discarding of local functions, as it has been adopted by 36 of the 44 municipalities in the past, overcomes the usual objections found in campaigns for consolidation of existing political units. The metropolitan government is authorized to levy a general service charge or tax for each particular function and to establish a base service which would be rendered alike to all sections of the area. If any of the local councils decide that they would like to have a higher degree or type of service,

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they may ask for such service and have an additional tax or charge on that area alone for the improved amount of service.

Under the California constitution, counties and cities are authorized to contract with each other for the performance of municipal services. This plan, based upon such authorization, could be adopted outright and all of the cities abolish their local administrative departments by merging them into metropolitan departments; or they might take the step of delegating their functions one by one to the central organization; or again they might remain autonomous until ready to enter in part or as a whole into the proposed scheme.

Naturally, the proposal is a tentative one and is now open for study and discussion. Many barriers are before it. Perhaps it will be necessary to have a few constitutional amendments or changes in the statutes affecting the smaller cities and the special districts. However, the proposal is so simple and the need so great that there is no doubt but that most of the smaller units will be glad to come into the plan immediately. Of course, larger cities like Pasadena, Long Beach, and Glendale feel themselves in competition with Los Angeles and will probably wish to protect themselves from any possibility of domination in the metropolitan government by their larger neighbor. With the preservation of some degree of autonomy in the local communities, it is expected that much of this provincial feeling will be overcome. Los Angeles county needs an immediate consolidation of its water supply and sewage disposal systems, as well as of the lesser services of fire, police, and health protection. An expanding amount of governmental service, with decreasing ability to raise sufficient revenue, will doubtless carry this proposal much more rapidly on its way than would be possible under normal or boom conditions.

EDWIN A. COTTRELL.

Stanford University.

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The Proposed Generalization of the Minorities Régime. The racial policy of the present German government has created a new interest in the problem of protection of minorities. Governments hitherto apathetic in regard to the problem were aroused by the Bernheim petition to the League in the spring of 1933 complaining of the discriminatory character of legislation in violation of the German-Polish convention of 1922.[1] They were also compelled to give attention to the renewed demand of the minorities states for a treaty binding all members of the League to respect the rights of their minorities. States like Italy and France, with large sections of their territory populated almost entirely by German-speaking people who are deeply conscious of their cultural differences with the majority of the state's population, would be expected to show considerable interest in the demand of the minorities states. Other states in whose territory reside many people differing in race, language, or religion from the majority of the population would also necessarily be concerned. The minorities régime and some of the problems created by it have been described in several publications.[2] It is the purpose of this note to trace the movement for, and to attempt an evaluation of, the so-called generalization of the obligations which certain states, members of the League, have assumed.

The present system originated at the Peace Conference at the close of the World War. One of the supplementary agreements to President Wilson's second draft of a covenant for a League required all new states "to bind themselves as a condition precedent to their recognition as independent or autonomous states to accord to all racial or national minorities within their several jurisdictions exactly the same treatment, both in law and in fact, that is accorded the racial and national majority of their people."[3] The British government preferred to leave the question of racial and national minorities to be settled in the territorial treaties. It preferred this method because it would permit special treatment in cases demanding it and, moreover, would permit the establishment of regional guarantees of the terms of the treaties by joint action of the states immediately concerned.[4] The provision remained in Wilson's third

[1] See below, p. 1095.

[2] League of Nations, C. L. 110. 1927. I; *Encyclopedia Britannica* (14th ed.), "Minorities"; *Geneva Special Studies*, Sept., 1931; Julius Stone, *International Guarantees of Minorities Rights* (London, 1932); *Bulletin International du Droit des Minorités* (Sijthoff, Leiden, since May, 1931).

[3] David Hunter Miller, *Drafting of the Covenant*, II, p. 91.

[4] *Ibid.*, II., pp. 129–130.

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and fourth drafts, but did not come before the Commission engaged in framing the Covenant. Article 19 of the Hurst-Miller *redaction*, which served as the basis of discussion in the Commission, provided that "the High Contracting Parties agree that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, either in law or in fact, against those who practice any particular creed, religion, or belief whose practices are not inconsistent with public order or public morals."[5] This article was finally dropped owing to the opposition of a few members of the Commission, particularly Venizelos, and to the attempt by the Japanese member to insert a clause stipulating racial equality.[6]

The outcome of the various proposals of governments represented at the Peace Conference and of the agitation of individuals and private associations for measures to protect minorities was the conclusion of several treaties, separated from the peace treaties except in a few cases, by the Allied and Associated Powers with individual states which undertook to respect the rights of racial, religious, and linguistic minorities, and which accepted the League's guarantee of the rights stipulated in the treaties. The states upon which the treaties were imposed are Poland, Czechoslovakia, Yugoslavia, Austria, Hungary, Bulgaria, Greece, and Rumania.[7]

Before these obligations were finally accepted by the above-named states, their representatives objected to the discrimination between them and other members of the League. They considered the imposition of these obligations on them and not on all states a violation of the principle of state equality.[8] President Wilson undertook to placate the representatives of these states. He pointed out that the burden of obtaining the decision which resulted in the creation of new states and in the accessions of territory to others had been borne by the Great Powers, which would also in the future bear the burden of maintaining the peace. Elements of disturbance of the peace they were therefore justified in removing.[9]

The limited application of the régime was also defended by the president of the Peace Conference, M. Clemenceau, in a letter to M. Paderewski, president of Poland, in which M. Clemenceau contended that the Conference, in requiring the new states and those receiving large accessions of territory to accept these obligations, was conforming to

[5] Miller, II, pp. 237.
[6] *Ibid.*, II, pp. 273–274, 307, 323–325, 387–392.
[7] Citations in footnote 2.
[8] Miller, *My Diary at the Conference of Paris*, I, p. 82, and Doc. 188; XIII, *passim;* H. W. V. Temperley, *History of the Peace Conference*, V, pp. 129–133.
[9] *Ibid.*

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an "established procedure of the public law of Europe," citing the action of the Berlin Conference of 1878 in requiring pledges from the Balkan states in return for recognition by the Great Powers. He also emphasized the responsibility of the Great Powers for insuring the peace threatened by the antagonisms between nationalities in Eastern and Central Europe. He did not mention the existence of similar conditions in territories of other states, including the Great Powers, which might have justified the demand that other, if not all, members of the League accept the same obligations. Implicit in M. Clemenceau's letter is the idea that it had been the duty of the Great Powers to exercise a certain authority in European political affairs, and that this duty would now be partly transferred to the League, particularly to the Council, in which the guarantee of the treaty provisions was invested.[10]

Obligations to respect the rights of minorities and the League guarantee of the provisions defining these rights were accepted by Albania and the Baltic states when they entered the League. Before accepting them, these states protested against the imposition of special duties on them, as did the other states at the Peace Conference. By subsequent arrangements, the League guarantee has been extended to Turkey, Irak, and Germany, in the last case, however, only to the rights of the minorities in German Upper Silesia.[11]

The limited application of the League guarantee has been consistently opposed by the minorities states, by several associations, and by a number of individual writers, usually on the ground that it violates the principle of state equality. They have urged the generalization of the obligations and of the guarantee or the suppression of the present system and the adoption of a general principle that a minimum standard of rights of individuals must be respected by all states.[12] For example, an international jurist, M. Mandelstam, has advocated such a course before the Institute of International Law.[13] Of course the most insistent

[10] Temperley, V, pp. 432–437.

[11] League of Nations, C. L. 110. 1927. I; *Official Journal*, 1921, 1161; 1922, 733–750, 1232–1237; 1923, 379–382, 1361–1363. *Reichsgesetzblatt*, 1922, II, p. 518 et sqq.

[12] League of Nations, O. J., 1929, Special Supplement, No. 73, O. J., 1926, p. 286 et sqq. Article by Fouques-Duparc in *Revue de Droit International et de Législation Comparée*, 1926, 3rd series, XII, pp. 509–524.

[13] M. Mandelstam brought the question of generalization to the attention of the Institute as early as 1921. A committee was created to study the international protection of the rights of man, of citizens, and of minorities. As *rapporteur*, M. Mandelstam presented reports in 1925, 1928, and 1929. In this last year, upon introducing a draft convention embodying a declaration on the protection of the rights of man and of citizens, he stated that there was considerable opposition to the generalization of the obligation to protect minorities, and that consequently he had submitted to the committee the proposal of a declaration aiming at the protection of the rights of man which he thought every government could properly endorse. At

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demand for generalization has come from the minorities states. The representatives of these states on the Council and on the Sixth Committee of the Assembly have on numerous occasions expressed their objections to the special position in which they have been placed and have proposed that the Council consider the extension of the guarantee to all members of the League.[14] The advocacy of reforms in the present system invariably brings a demand from one of the minorities states for generalization.[15]

The only concession made to the demands has been the adoption of a resolution by the League Assembly in 1922. This resolution is as follows: "The Assembly expresses the hope that the states which are not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious, or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council."[16] It is readily perceived that this resolution falls far short of meeting the demand of the minorities states, so that it is not surprising that they have continued their agitation for further action by the League in successive meetings of the Assembly.

The case against generalization was summarized in 1926 by the *rapporteur* on minorities who had been asked to examine the proposal of the Lithuanian government that a committee be appointed to consider the application of the guarantee to all members of the League. He said: "A minority, as defined by the treaties assuring its protection, is not only a social group incorporated in a body of a nation of which the majority forms a different racial unit. There is also a psychological, social, and historical attribute, constituting, perhaps, for the purpose of the definition which we are seeking, its principal differential characteristic. The mere co-existence of groups of persons forming collective entities, racially different, in the territory and under the jurisdiction of a state is not sufficient to create the obligation to recognize the existence in that state, side by side with the majority of its population, of a

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the same time, he presented as a recommendation a draft convention for the protection of minorities. The declaration produced considerable discussion among the members of the Institute. After making some changes in the text as presented by the *rapporteur*, and after several members explained that they did not consider the declaration as of much value, the draft declaration was adopted by a vote of 45 to 1, with eleven abstentions. None of the English members supported it. *Annuaire* 1925, 246–392; 1928, 275–311; 1929, I, 715–732; II, 110–138.

[14] See the minutes of the Sixth Committee of the Assembly, published as special supplements of the *Official Journal*. See particularly O. J., 1926, p. 286 et sqq.

[15] Especially O. J., 1929, Special Supplement 73, p. 70; O. J., 1930, 1931, 1932, 1933, Special Supplements 90, p. 115; 99, p. 14; 109, p. 33; 120, pp. 30–55, *passim*, respectively.

[16] League of Nations, C. 8 M. 6. 1931. 1. pp. 240–242. Records of Third Assembly, Plenary, 37–107, *passim*. Minutes of Sixth Committee, 11–30.

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minority requiring a protection entrusted to the League of Nations. In order that a minority, according to the meaning of the present treaties, should exist, it must be the product of struggles, going back for centuries, or perhaps for shorter periods, between certain nationalities, and of the transference of certain territories from one sovereignty to another through successive historic phases. These factors, however, are not constant in all states members of the League of Nations. In the countries of the American continent, they do not exist at all, and they have not sufficiently objective character to enable the social fact in question to be described. A general treaty for the protection of minorities such as was proposed . . . would be without meaning for all the American states. . . . The adhesion of all these states would be impossible, just as it would be impossible for most of the non-American states to adhere to it. The following observations made by the Dutch senator, Baron Wittert van Hoogland, is particularly happy. The introduction into the laws of all countries of provisions protecting minorities would be enough to cause them to spring up where they were least expected, to provoke unrest among them, to cause them to pose as having been sacrificed, and generally to create an artificial agitation of which no one had up to that moment dreamed."[17]

Only one of the states not bound by the treaties had, before 1933, indicated clearly a willingness to accept a League guarantee of the rights of its minorities, namely, Germany. The Reich's delegates to the Assembly had for several years taken it upon themselves to defend the rights of minorities and to urge more vigorous enforcement of the guarantee. In order to accomplish this, they advocated several reforms in the procedure observed by the League in executing its duty as guarantor.[18] In reply, the representatives of the minorities states have professed adherence to the terms of the treaties and expressed willingness to consider any improvements in the system, but always with the significant proviso that all members of the League be placed under the same régime as themselves. German delegates have stated that their government would consent to be so bound.[19]

[17] O. J. 1926, 141–144; 138, 293. The above extract from the statement by the *rapporteur* is not quoted with approval, but merely as representative of the arguments which have been advanced against generalization, in addition to those used by Wilson and Clemenceau to justify the limited application of the régime.

[18] See particularly, O. J. 1929, Special Supplement 73, German government's letter and statements by German delegate before committee. Also, Minutes of Sixth Committee, cited in footnote 15.

[19] *Ibid.* and O. J. 1933, Special Supplement 120, pp. 42 and 44. In the German government's reply to the Allied and Associated Powers on the occasion of transmission of the peace treaty, during the Peace Conference, comment was made upon the provisions for the protection of minorites and the government expressed its

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It was quite natural, therefore, that the members of the League should show a special interest in the remarks of the German government's representative in the 1933 Assembly. In accordance with a practice of several years' standing, the German delegation asked in one of the early plenary sessions that the part of the Secretary-General's report which dealt with minorities questions be referred to the Sixth Committee. At the Committee meeting of October 4, the German representative opened the discussion on the report by repeating in substance the speech which his predecessors had made in the three preceding Assemblies, urging the adoption of measures which would improve the practice followed in dealing with cases brought to the attention of the League. He particularly advocated greater publicity for the work of the special committees to which petitions were referred, granting the petitioner the right to be heard subsequent to the receipt by the committees of the observations on petitions made by the government concerned, and the creation of a permanent commission to assist the Council.[20]

Remarking that the whole problem of protection of minorities is not exhausted with the settlement of questions concerning procedure, the German representative expressed a view which revealed one of the principles of the new German régime: "The question at issue is a spiritual dispute on the principle of nationalities. . . . The attitude of the League and its composite bodies toward the question of the protection of minorities and the discussions which have taken place on subjects of this nature are only symptoms of the intellectual struggle. I think that it is not enough, in the long run, to confine our attention to symptoms; I therefore believe that we must make up our minds to treat the disease." He deprecated the tendency alleged to be discernible in the policy of some states to a more or less forcible assimilation of foreign minorities by the majority of the population and emphasized the importance his government attached to the idea of ethnic nationality. "This avowal expresses the unity of feeling in all those who are bound by common blood or by a common language, and who enjoy the same civilization and customs. The members of a nation or an ethnic group living in a foreign environment constitute, not a total number of individuals calculated mechanically, but, on the contrary, the members of an organic community, and it is thus that, at the bottom of their hearts, they view themselves. They also desire recognition as a group where their rights are concerned. The very fact that they belong to a nation means that the nation in question has a natural and moral right to consider that all its members—even

intention to accord fair and impartial treatment to minorities in Germany. Miller, *Drafting of the Covenant*, I, p. 548.

[20] For a consideration of these proposed reforms, see the writer's note in this REVIEW, Vol. 27, pp. 250–259 (Apr., 1933), and Stone, *op. cit.*

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those separated from the mother country by state frontiers—constitute a moral and cultural whole." Admitting that not all states agreed on the problem of protection of minorities, he proposed that an effort be made by members of the League to agree on "the aspect of principle governing the problem of racial nationality and the rights resulting therefrom for the different groups of racial nationalities."

Aware that his government had been criticized for its policy toward the Jews, and anticipating references to it by other delegates, the German delegate insisted that the Jewish question in Germany was a peculiar problem of race and not a minority problem. The Jews in Germany, he insisted, were not considered, and did not consider themselves, a national minority, and never expressed any desire to be treated as such. "The practice of Judaism is completely free, and the religious question plays no part whatever in the settlement of the Jewish problem in Germany. In Germany, it is primarily a demographical, social, and moral problem, which has been peculiarly aggravated by a mass migration of Jews from Eastern Europe westwards. It is a problem *sui generis*, for which, accordingly, a special settlement will have to be found."[21]

In addition, therefore, to the usual exchange of views concerning reform of the existing system for the protection of minorities, discussion ensued on two other propositions which the German delegate laid before the Sixth Committee: (1) that members of the League should recognize the principle of ethnic nationality and, in consequence, should respect the linguistic and cultural peculiarities of their citizens; and (2) that the Jews do not constitute an ethnic nationality. This was raising the question of generalization in a new form. It was, indeed, substituting a different concept of minority for that which had been recognized in the existing system of protection.

The first proposition was rejected by several delegates who expressed doubt as to the meaning of "ethnic nationality" or who, construing it to mean a social group based on common race and/or common language, denied that race and language are the only factors in social groups to be considered. The second proposition was rejected as being entirely contrary to fact; or, if Jews were denied the character of an ethnic nationality, they were excluded by definition from an artificial social group, for they certainly considered themselves, and were considered by others, as constituting a distinct social group possessing characteristics of an "ethnic nationality," if that term had any meaning at all.

Whatever the views were concerning these propositions, it was clear that there existed a situation which aroused the attention of people throughout the world and which many governments thought should be

[21] O. J. 1933, Special Supplement 120, pp. 22–25.

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inquired into by the League. At its May, 1933, session, the Council's attention had been called to the legislation passed in Germany which excluded non-Aryans from the enjoyment of certain civil rights. The petitioner complained that this legislation was incompatible with several articles of the Polish-German convention of 1922 which guaranteed equality of rights to all inhabitants of Upper Silesia. The Council took note of the statement of the German government's representative that the government would apply no legislation which was in conflict with any international conventions to which it was a party.[22] From this it would appear that the German government meant to make no discrimination between Aryans and non-Aryans in Upper Silesia. The governments represented at the Assembly were informed that the discrimination would be made in Germany outside Upper Silesia. It was also clear, therefore, that the situation was of the sort which the minorities régime was expected to prevent, and that this particular one was not covered by the régime. Moreover, the German government itself, through its representative on the Sixth Committee, was directing the attention of the Assembly to the problem of finding adequate measures for protecting minorities. Consequently, new proposals for the extension of obligations to all members of the League were not unexpectedly or inappropriately introduced.

It was to be expected that the minorities states would renew their efforts to place all members of the League under the same obligations toward minorities. The Polish delegate submitted a resolution proposing that the Assembly request the Council to appoint a committee of inquiry to study the problem and to submit to the next Assembly a draft convention defining identical obligations for all members of the League and ensuring international protection of minorities of race, language, and religion. This resolution was supported by the representatives of the minorities states.[23]

Other resolutions were introduced, most of them less far-reaching. Haiti, however, proposed the conclusion of an international convention aiming at the guarantee of the rights of man and of citizens.[24] The British delegate suggested that the Assembly reaffirm the resolution of 1922; and the French delegate introduced a resolution to this effect, the terms of which, however, modified the original resolution in such a way as to make the undertaking legally binding.[25] Only one state actively opposed the Assembly's adopting new measures. The Italian representative declared that those which were directed at generalizing the

[22] The Bernheim case. For a full account of this case, see O. J. July, 1933, pp. 833–849.

[23] O. J. 1933, Special Supplement 120, p. 30 ff.

[24] *Ibid.*, p. 32 ff.

[25] *Ibid.*, pp. 28, 34–37.

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obligations were premature and would probably do more harm than good.[26] Since the opposition of one state would be sufficient to prevent the adoption of a resolution, the attitude of Italy, which was unquestionably shared by other states whose representatives chose not to define it, indicated that generalization, or anything approaching it, would not be achieved. The several proposals were finally referred to a sub-committee which reported in favor of reaffirming the 1922 resolution, with the additional provision that the Assembly considers that the principles "must be applied without exception to all classes of nationals of a state that differ from the majority of the population in race, language, or religion."[27]

It is likely that the German situation was merely the occasion for the introduction of the Polish government's resolution and probably also of that of the government of Haiti which embodied the ideas that had received so much attention in the annual meetings of the Institute of International Law. On the other hand, the German situation was undoubtedly the cause of the other proposals. The above-mentioned addition to the 1922 resolution was inserted undoubtedly as a reply to the German delegate's assertion that the Jews did not constitute a minority in the sense in which the term was used in the 1922 resolution. The German delegate opposed the inclusion of the additional provision, and the Assembly concluded its consideration of the minorities question by reaffirming its resolution adopted eleven years earlier.[28]

Although no progress was made toward accomplishing generalization, the discussion in the Fourteenth Assembly was significant. It revealed that a few states whose attitude on this question had not been expressed before were willing to commit themselves to the extent of giving support to the idea of all members of the League being bound by the obligation to observe some standard in their treatment of minorities.

The remarks made by the Swedish delegate are representative of this point of view and deserve quotation. After voicing the opinion that the resolution of 1922 imposed a moral obligation on all members of the League, he continued by pointing to the need of the Assembly evincing its intention to take no backward step. "The time is now drawing near for serious consideration of the possibility and means of converting these principles [embodied in the 1922 resolution] into more far-reaching undertakings. The problem of minorities presents two aspects. There is first the case of a minority belonging to a people represented, and perhaps mainly represented, by an independent state. The other case is that of minorities belonging to a people having no state (Jews, Assyrians, Armenians, and others). The special treaties draw no legal distinction

[26] *Ibid.*, p. 48. [27] O. J. 1933, Special Supplement 120, pp. 59, 72.
[28] *Ibid.* and O. J., 1933, Special Supplement 115, p. 88.

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between these two cases. The Bernheim petition and report adopted by the Council provide a clear example of this.[29] It is, moreover, more than evident that the two cases mentioned above are both covered by the Assembly resolution of 1922. . . . It seems to me well to draw attention to this resolution, and I therefore suggest to the Committee that it should endorse it afresh. Such action would add nothing to the legal obligations already binding states; the decision was taken and the moral obligation entered into more than ten years ago. Certainly no one would wish to take a backward step; we must, on the contrary, frankly ask ourselves whether we are not prepared to take a step forward. I am convinced that we must consider closely and in all seriousness both the possibility and the means of converting the principles already adopted into legal undertakings."[30]

The seriousness of the problem and the persistence of the minorities states in their demand for generalization were made evident again in the Assembly of 1934. The Polish foreign minister, Colonel Joseph Beck, when addressing the plenary session on September 13, announced that his government would no longer coöperate with the League in executing the provisions of the Minorities Treaty unless all members of the League assumed the same obligation.[31] This pronouncement provoked replies from the representatives of several states, including Great Britain, France, and Italy, who insisted that treaty obligations must be respected.[32] The discussion of the problem was transferred from the Assembly hall to the committee room and to the corridors, where the Polish representatives were apparently persuaded to retract.[33]

The application of international protection of minorities to states in which conditions prevail identical with or similar to conditions in the states which have accepted obligations cannot be reasonably opposed. The principle of state equality might be respected by the extension of the same obligations to all states, but the price of such extension would be very great, for reasons stated by the Council *rapporteur*, quoted above. It is objectionable for the further reason that it would probably lead to the existing guarantees becoming entirely ineffective. Governments would be more hesitant to call the Council's attention to violations of the treaties than they now are if all were equally bound. This ought not to be the case, but it probably would be. Less objection can be raised to

[29] Citation in footnote 22 above. [30] O. J. 1933, Special Supplement 120, p. 29.

[31] "Pending the bringing into force of a general and uniform system for the protection of minorities, my government finds itself compelled to refuse as from today all coöperation with international organizations in the matter of the application by Poland of a system of minority protection." He explained to reporters that suspension, and not denunciation, of the treaty was intended. *N.Y. Times*, September 14, 1934.

[32] *Ibid.*, September 15, 1934. [33] *Ibid.* September 22, 1934.

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the proposal that all states accept some obligations toward their minorities without accepting the present régime, which is the aim of the minorities states advocating generalization. While it is undoubtedly true that in every state discriminations on the basis of race, language, or religion sometimes occur, and that abusive treatment of a racial or religious group sometimes happens, it is not true that the situation needing a remedy is equally pressing in all states. When conditions in those states where feeling between different nationalities or different races causes discrimination and occasionally leads to bloodshed and disorder are improved so that the same level has approximately been attained, then acceptance by all states of the same obligations toward minorities might be justified.

Instead of attempting to attain generalization, those interested in ensuring protection for minorities might better concentrate upon the improvement of the present régime with a view to perfecting the machinery in operation for the benefit of minorities. The régime might be considered one of several experiments in international administration on the success of which rests the realization of international government.

No world government exists which can provide security for all persons everywhere. In its absence, it must be admitted that the power possessed by some states is the decisive factor in international relations. It was generally agreed that the transfers of territory and the establishment of new states by the freeing of oppressed nationalities, effected by the exercise of power on the part of the larger states, while just, would produce a situation likely to become dangerous to the peace of the world as well as threatening to the security of members of nationalities formerly occupying a dominant position. The Allied and Associated Powers saw a particular danger and adopted measures to prevent it from becoming imminent.

Within states, the people will tolerate the exercise of power by the stronger elements in the population if it maintains a condition of peace and order, preferring it to anarchy. So long as no government based on the consent of all the governed is possible, power of the stronger will be exercised. It should be remembered that treaties of the nineteenth century contained provisions stipulating rights, especially religious freedom, for minorities in Eastern Europe. These provisions were inserted at the behest of the Great Powers, which assumed some responsibility for their observance. The assumption of responsibiity by the League for the treaties concluded at the Peace Conference made the realization of the rights prescribed in the treaties more certain and deprived the Great Powers of their exclusive position.

HOWARD B. CALDERWOOD.

University of Michigan.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Since the resignation of President Walter Williams, Dean Frederick A. Middlebush has been acting as president of the University of Missouri.

During the first half of the present academic year, Professor Rudolf Laun, of the University of Hamburg, is conducting a seminar in political science, international law, and the philosophy of law at the University of Michigan.

Dr. Harold W. Stoke, of the University of Nebraska, has been promoted from assistant to associate professor of political science.

Dr. John J. George, Jr., has been advanced from assistant to associate professor of political science at Rutgers University.

Professor Leon W. Godshall, recently of Union College, is serving this year as head of the department of history and political science at Dickinson Junior College, Williamsport, Pa.

Professor Hugh L. Elsbree, of Dartmouth College, is at present connected with the Federal Power Commission and is assisting in the preparation of legislative proposals which the Commission will submit to Congress at its next session.

Dr. George C. S. Benson has left Harvard University to become research consultant of the American Legislators' Association, and managing editor of *State Government*. During the fall quarter he is giving the introductory course on public administration at the University of Chicago.

Professor Jesse S. Reeves, of the University of Michigan, is on leave of absence during the first semester. In addition to attending meetings of the Institut de Droit International at Madrid, he is making a trip around the world, visiting the Dutch East Indies and the Philippine Islands as well as China and Japan.

Dr. Taraknath Das, author of *India in World Politics* and *British Expansion in Tibet*, is lecturing on Far Eastern affairs at the Catholic University, Washington, D. C., during the current academic year.

Professor F. K. Krüger, of Wittenberg College, has been invited to serve as American guest lecturer at the Deutsche Hochschule für Politik in Berlin during the winter semester.

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Dr. Kenneth O. Warner, recently appointed director of the Arkansas Municipal League, has been promoted to associate professor of political science at the University of Arkansas.

Mr. William H. Allen, since 1915 director of the Institute for Public Service in New York City, became secretary of the New York City civil service commission on September 1.

Dr. Harlow J. Heneman, who received his advanced degree from the University of London in June, has been appointed to an instructorship at the University of Michigan.

Mr. Joseph E. Kallenbach, formerly an instructor at Iowa State College, has been appointed teaching fellow in political science at the University of Michigan.

Dr. Fritz M. Marx, of Princeton University, is in charge of the graduate course in municipal government and administration at New York University during the current academic year.

Dr. Robert J. Harris, Jr., who received his advanced degree at Princeton in June, has been appointed instructor in political science at the University of Cincinnati.

Dr. David Fellman, for the past two years a graduate student at Yale, has been appointed instructor in political science at the University of Nebraska.

Dr. Harry M. Satterfield, who received his advanced degree in political science from the University of Nebraska, has been promoted to assistant administrator in the FERA unit in Nebraska.

Dr. Charles W. Smith, Jr., who received his advanced degree at the University of Wisconsin during the summer, has accepted a teaching position at Rutgers University.

During the absence of Professor Frederick H. Guild, Professor Walter E. Sandelius is acting as head of the department of political science at the University of Kansas.

At Hamilton College, Dr. J. Q. Dealey, Jr., has been advanced from assistant to associate professor.

Mr. Hiram M. Stout, assistant professor of political science at DePauw University, received his doctor's degree from Harvard University in June and spent the summer in London studying aspects of British administration.

Dr. Harold Zink, professor of political science at DePauw University, has returned from a year's leave of absence spent in the Far East.

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Mr. Donald C. Stone, director of the Public Administration Service, Chicago, was recently appointed executive director of the International Association of Public Works Officials and of the American Society of Municipal Engineers, both organizations having established new headquarters at 850 East 58th Street, Chicago.

At the meeting of the International Association of Governmental Labor Officials in Boston during the last week of September, Professor Leonard D. White, of the U. S. Civil Service Commission, delivered an address on the problem of administrative personnel. He participated also in conferences which led to a revision of the constitution of the Civil Service Assembly and to a decision to establish a headquarters office in Chicago.

Professor Jerome G. Kerwin has succeeded Professor Leonard D. White on the Social Science Research project dealing with the relation of school boards to city governments carried on at the University of Chicago by the school of education in conjunction with the department of political science.

There has been created at the University of Michigan a bureau of reference and research in government, with Mr. Harold D. Smith, director of the Michigan Municipal League, in charge.

Dr. Carroll K. Shaw, who completed his graduate work in public administration at the University of Illinois in 1933, and has since been with the Federal Emergency Administration of Public Works, has recently been appointed administrative assistant to the director of the Inspection Division. He has been assigned the duty of working out improved administrative methods and organization for this rapidly-expanding unit of the Administration with a view to making as effective as possible the enforcement of compliance with Public Works Administration requirements on the part of borrowers and contractors.

In appointing a special advisory commission on constitutional revision, Governor Clarence D. Martin of Washington included two political scientists—Professors Claudius O. Johnson, of the State College of Washington, and Joseph P. Harris, of the University of Washington. The commission will specially consider changes in the state constitution which are necessary to modernize state and local government. At a preliminary meeting in October, it went on record in favor of a unicameral legislature.

Dr. Roy V. Peel, associate professor of government and acting director of the Division of Research in Public Administration in Washington Square College, New York University, has been granted leave of absence from the University for the current academic year to conduct a survey

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of public administration in the Scandinavian countries. The study will be made for the Institute of Public Administration, which received a special grant from the Spelman Fund to finance the project. Dr. Peel's post as acting director of the Division will be occupied temporarily by Professor Rinehart J. Swenson, chairman of the Washington Square College department of government. Mr. Howard P. Jones, secretary of the National Municipal League and editor of the *National Municipal Review*, and Mr. Russell McInnes, a member of the division of research in the municipal bond department of Lehman Brothers, New York City, have been appointed lecturers in government to take charge of some of Professor Peel's work.

American representatives at the meeting of the Institute of International Law held at Madrid October 15–25 included Dr. James Brown Scott of the Carnegie Endowment for International Peace, Messrs. Frederic Coudert and Arthur Kuhn of New York City, and Professors Jesse S. Reeves of the University of Michigan and Philip Marshall Brown of Princeton University. Topics discussed at the conference included the creation of an international office of marine waters, international rivers and bodies of water, reprisals in time of peace, and the recognition of new states and governments.

The highly successful public forums conducted in Des Moines, Iowa, under control of the board of directors of the city schools and guided by Dr. Carroll H. Wooddy, formerly of the University of Chicago, have entered upon their third year. Among visiting lecturers and leaders will be Professors Peter H. Odegard, of Ohio State University, and Herbert Phillips, of the State Teachers College of Fresno, California, and Messrs. Hubert Herring, Leon Whipple, and Chih Meng, of New York City.

The second annual Midwest Police Conference traffic school, conducted jointly by Northwestern University and the Evanston police department, was held at Northwestern University through a period of two weeks in October. Both class work and field work were provided, the Evanston police department being used as a laboratory.

About one hundred city managers and an equal number of mayors, department heads, and other officials attended the twenty-first annual conference of the International City Managers' Association held at St. Louis on October 15–17. The topics discussed included problems of public utility management, city-federal relationships, maintaining contact with the public, police and strikes, city managers' responsibility for forced budget reductions, and matters pertaining to financial and personnel administration.

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Civil service commissioners and staff members of personnel agencies met in Chicago early in October for the annual conference of the Civil Service Assembly of the United States and Canada. Considerable interest was shown in apprenticeship training and in encouraging employees to take further university or high school training on the job. Much emphasis was placed also on "selling" the work of personnel agencies to the general public. Mr. Clifford N. Amsden, of the Los Angeles county civil service commission, was elected president of the Assembly.

The fifty-fourth annual meeting of the Academy of Political Science was held at the Hotel Astor, New York City, on November 9. The general subject was the stabilization of peace, and among those who appeared on the program were Hon. Owen D. Young, Hon. Newton D. Baker, ex-Senator Hiram Bingham, Professors Charles Cheyney Hyde and James T. Shotwell, and Messrs. Allen W. Dulles, Frederic R. Coudert, Charles Warren, Raymond B. Fosdick, Francis B. Sayre, and Stephen P. Duggan.

Consideration of the tax programs of the forty-eight states and the federal government as a unified whole, instead of dealing individually with the important taxes subject to conflict, will be a new method of approach in the study of tax problems by the Interstate Commission on Conflicting Taxation. Heretofore, the Commission, set up over a year ago by the Interstate Assembly, has studied conflicting taxation mainly through examination of the individual types of taxes, such as gasoline, tobacco, income, and death taxes. The new viewpoint is an outgrowth of a conference which the Commission held recently in Boston. Early in 1935 the Commission's research staff will report on the probable revenues for the federal government and for each state under various possible plans of coördinated taxation.

The annual meeting of the American Municipal Association was held at the University of Chicago on October 25 to 27. Delegates from thirty-three state leagues of municipalities discussed relief, taxation, professionalizing the municipal service, low-cost housing, and the rôle of cities in national planning. Among the speakers were Mr. Aubrey Williams, assistant federal relief administrator, and Professors Charles E. Merriam and Luther Gulick. The annual conference of the United States Conference of Mayors was held also at Chicago on November 22–24. Speakers included Dr. A. A. Berle, Hon. F. H. LaGuardia, Hon. Daniel W. Hoan, and Mr. Harry L. Hopkins. The chief subject of the conference was the problem of unemployment relief.

A fundamentally new relief program assigning to the federal government complete responsibility for the care of the employables of the

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country and to the cities and states the task of caring for the unemployables was suggested by Paul V. Betters, executive director of the United States Conference of Mayors and the American Municipal Association, at the convention of the International City Managers Association held in St. Louis at the middle of October. In summary, the proposal is: (1) that the eighteen million people now on relief be divided into two general classes—employables and unemployables; (2) that the national government take complete responsibility for care of the employables—those able and willing to work—under a work program; (3) that major emphasis in this work program be given to building low-cost housing; and (4) that cities and states assume complete responsibility for caring for the unemployables—those dependent because of old age or mental or physical defects. Mr. Betters pointed out that, after fifteen years of experimentation, Great Britain has adopted a plan of financing relief needs embodying substantially these principles.

The American Council of Learned Societies has recently announced that it is prepared to extend assistance to the publication of a limited number of works in the humanities by American scholars, and has invited its constituent societies to propose works suitable for such assistance. It also reserves the right to consider works submitted to it "by others than constituent societies." Proposals from constituent societies must be submitted to the executive offices of the A.C.L.S. on or before January 5, 1935, and "earlier if possible." Arrangements are under way for the consideration of manuscripts to be submitted by the American Political Science Association, and persons who have, or know of, worthy manuscripts in the field of political science are invited to communicate promptly with the chairman of the sub-committee on publication of the Committee on Policy, Professor F. W. Coker, Yale University, New Haven, Connecticut. "Works proposed for publication should be complete works, preferably the results of constructive research presented in the form of volumes of conventional size. Important tools of research and critical editions may also be proposed."

The seventh annual convention of the Southern Political Science Association was held at the Biltmore Hotel, Atlanta, November 1–3. The attendance was unusually large, and in addition to the regular membership, Dean W. J. Shepard of Ohio State University and Professors Clyde L. King of the University of Pennsylvania and A. N. Holcombe of Harvard University were present. The program included round-tables on International Relations, led by Robert Wilson of Duke University; The New Deal and the Constitution, led by Irby R. Hudson of Vanderbilt University; The Tennessee Valley Authority, led by F. W. Prescott of the University of Chattanooga; Primary Elections of the South in 1934,

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led by Charles W. Pipkin of Louisiana State University; and The Philosophy of Government, led by Nick P. Mitchell of Duke University. Formal addresses were given by Dean Shepard, Dr. King, Dr. Holcombe, and Professor E. B. Wright of the University of Alabama, the president of the Association for 1934. Officers elected for 1935 are: president, Dr. John W. Manning, University of Kentucky; first vice president, Dr. A. B. Butts, Mississippi State College; second vice president, Dean Charles W. Pipkin, Louisiana State University; corresponding secretary, Professor Glenn Rainey, Georgia School of Technology; and recording secretary, Dr. Frank W. Prescott, University of Chattanooga. On November 2–3, a conference on civic education, sponsored jointly by the Southern Political Science Association and the sub-committee on political education of the Committee on Policy of the American Political Science Association, was held at the Biltmore Hotel.

Personnel Questions of Interest to the Political Scientist. The sub-committee on personnel of the Committee on Policy of the Political Science Association would like to obtain information concerning courses offered by political science departments on the scope and methods of political science. It will be recalled that in the Anderson report on "Teaching Personnel in American Departments of Political Science"[1] there is a discussion of the importance of developing such courses as part of the training of political scientists for teaching positions. Such information might usefully include an outline and bibliography of the course, with any other descriptive data that may seem relevant to the instructor. Information is desired also concerning the program and organization of training schools for the public service. Requests for information concerning both questions have been coming to the committee, which hopes to serve as a central depository for such material as may be useful to members of the Association. Communications may be addressed to the chairman, John M. Gaus, South Hall, University of Wisconsin, Madison, Wis.

The committee also desires to remind members of the Association that the two new types of fellowship grants lately established by the Social Science Research Council should be kept in mind by political scientists. One type of fellowship is designed to encourage students of high quality who are completing their undergraduate courses to undertake graduate work in the social sciences. The other offers opportunity to students well along in their graduate work to obtain access to materials or persons especially important in the development of the student's work or training.

The memorandum which follows was prepared, at the request of President Shepard of the Association, by the sub-committee on personnel. The members of the sub-committee during the year 1934, all of whom

[1] See this REVIEW, Vol. 28, No. 4 (August, 1934), pp. 726–765.

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participated in the preparation of the memorandum, are William Anderson of the University of Minnesota, Phillips Bradley of Amherst College, John M. Gaus of the University of Wisconsin, Luther Gulick of the Institute of Public Administration, and Charles McKinley of Reed College. Mr. Gaus, present chairman, and Mr. Anderson, first chairman of the committee, appeared before the Commission of Inquiry into Public Personnel at its public hearing in Minneapolis, Minnesota, on November 8 and 9 as representatives of the committee. The director of the Commission is Dr. Luther Gulick, and among its members are Professor Charles E. Merriam of the University of Chicago and Mr. Louis D. Brownlow, director of the Public Administration Clearing House.

MEMORANDUM SUBMITTED TO THE COMMISSION OF INQUIRY ON PUBLIC SERVICE PERSONNEL, NOVEMBER 1, 1934

1. Introductory Note. Various points of view concerning political questions are naturally to be found among American political scientists, who do not attempt to formulate, through their Association, any common policy concerning current issues. Nevertheless, for two reasons the nature of their professional activities places upon them an obligation to submit some general considerations of the public service problem to your commission. Political scientists, through their acquaintance with students, observe the influence of standards and procedures in and of ideas concerning the public service held in the community upon student attitudes toward civic obligations and career opportunities. In addition to this, a large number have from time to time served in governmental agencies, and also have conducted research on administrative problems related to or identical with those which your commission is investigating. The views set forth in this memorandum are not official declarations of policy urged by the Association; but they do represent generally accepted deductions from the observations and experience of political scientists as clarified by their extensive discussion of these matters in print and conference over the past half-century.

2. The Political Setting. The American problem of the public service has naturally certain peculiarities. Unlike most other states of the world, we have a continent to govern, with diverse geographic regions and a population of diverse racial and cultural origins. No single metropolitan capital with a concentrated national leadership in journalism, finance, industry, commerce, or the professions serves as a focal point in the formulation of political opinion and the sifting of political and administrative policies and standards. The importance of positions of party leadership associated with the government of the day, corresponding to the posts of party leadership found in parliaments and ministries in European states, must therefore be recognized. Such leaders serve as the human and symbolic embodiment of the general policy and outlook of a government

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which might otherwise seem dangerously remote. Such symbolism is important as a stabilizing factor in the process of social change, when essential developments of policy and changes in objectives may be jeopardized because of the lack of adequate personal political leadership to interpret and give personal backing and support to the necessary new policies throughout the country.

3. The Administrative Needs. But the major portion of governmental activity necessarily requires the knowledge and insight that come only with adequate educational preparation, relevant experience, and the consciousness of professional standards that must be maintained and furthered. The success or failure of the policies advanced by responsible party leaders and the effective integration of sectional requirements into a national program rest upon honest, intelligent, impartial administration. A society that pays even lip service to the idea of democracy will insist upon two practical measures in this connection:

A. Recruitment of these services, upon which a decent standard of living is increasingly dependent, should be based most broadly on all the population regardless of religion, party, race, place of residence, or other factors irrelevant to the central requirement of capacity to do good work in the public service.

B. The public is entitled to obtain greater returns from the vast system of elementary, secondary, and higher education which it provides free or with small charges to the students who use it, by securing in some regular and recognized form an increased amount of the service of the best products of this system.

4. Equality of Opportunity. Both of these general statements require specific measures for their adequate application. For example, many American communities are deliberately endangering their standard of living as protected by health officials and other public officers because of an insistence on a local residence requirement. We hope that your commission will point out to the public the illogical and self-punishing nature of the frequent rejection by state and local governments of an all-American basis for recruiting, regardless of class, party, race, residence, or religion, and regardful of capacity and honesty for the employees of our local, state, and national governments. The merit system, and a clearer recognition of the usefulness of secondary school, college, and graduate school records as evidence of fitness for various positions, are essential instruments for insuring democratic equality of opportunity, and should be extended widely in areas in which they are not now applied.

5. The Use of Our Educational Resources. A practical example of the application of the second general principle may be useful. The public is too little aware of the splendid professional, scientific, and other specialized governmental services which have developed in this country in the

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past fifty years, through the coöperation of governments, educational institutions, and professional societies and organizations. For example, the many great scientific staffs of the Department of Agriculture come to mind, and the achievements of municipal departments upon whose adequate dealing with complex questions the welfare of millions may depend. But the immense problems thrust upon government by the collapse in business, commerce, finance, and industry in recent years illustrates the great need for increased emphasis on the functions of coördinating those services, forecasting costs and consequences, and taking long-time views in matters of population trends, sources of revenue, and developments of all kinds. Here there is no single type of professional preparation such as is provided in a school of forestry, agriculture, public health, library administration, or social welfare administration. Special training must come partly on the job in governmental work that helps the alert apprentice to obtain insight into the interrelations of functions and the problems of coordination and control. A selection of a fair sampling of the most able young men and women who have been given by American society the opportunities for development in our educational system should be brought into the national, state, and local service more regularly than at present and under conditions which will better awaken them to their civic obligations.

6. *Recommendations: Classification and Recruitment.* The practical implementing of such a program is indicated by scattered developments already under way in various governmental and governmental research offices in this country. By designating a class of positions in the civil service recruiting classification marked by duties of general administrative staff assistance to experienced officials, by examining for these positions on the basis of general personal capacity and the use made of educational advantages offered in our system, by paying a modest living wage, and by offering a fair chance to compete for promotional posts in general administration with those entering the service in other classes of positions, we can do much to end our present waste of ability and civic interest and establish a more democratic method of obtaining a good quality of service for the nation. We hope that your commission, with its opportunity of taking a wider view of developments in government and economic life, will call attention to the neglect of this coördinating and general administrative function (a neglect as marked in economic life as in government) and press the case for recruiting a fair share of intelligence and ability for meeting this need.

7. *Recommendations: An Administrative Staff College.* We commend to your consideration also the fact that several special and professional services have secured, in the national government, staff colleges in which their problems can be studied and administrators given special training for dealing with these problems. Arrangements are made also for sending

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members of these staff colleges to institutions here and abroad for special research and observation which adds to their value in the public service. Typical of these staff colleges are the Army and Naval War Colleges, the Army Industrial College, and the Army and Naval Medical Colleges. We believe that with the increasing importance of problems of forecasting, coördination, finance, and general administration a civilian administrative staff college will be essential. Provision should be made for sending to this college for periods of research and special training not only members of the national civil service but also local and state officials, in view of the development of coöperation of all levels of government in the administration of various functions. Provision should also be made for assignment to institutions here and abroad for special training and research as already practiced in the existing staff colleges. The requirements of general administrative direction and control are at least as rigorous and difficult as those of any one administrative service, and it is time to recognize this in adequate staff institutions which serve to improve general administration.

8. Recommendations: An Auxiliary Civil Service. Finally, we hope that your commission will call to the attention of the public the appearance of a new supplementary or auxiliary public service in the secretaryships of civic organizations, and more recently on the staffs of trade associations and code authorities. Just as the German "cartel leaders" were found to be more adequate for their posts if trained in administration, public law, and economics rather than in the techniques of their respective industries, so we are finding that the problems of a code are interdependent with the whole economic, social, and political structure. The failure to foresee this growing interdependence, indeed, is a prime cause of our post-war difficulties. The problem of recruitment and training of the men and women to be employed in these organizations has therefore marked resemblance to that of the public service, and we believe that your commission may well call upon our educators to recognize this.

9. Conclusion. In brief, we believe that the public service will benefit from being thrown open more widely on a democratic basis. Such a program will bring a better return for the expenditures on education in this country, and will break down some of the existing party, local, and other barriers to the best use by the American people of their human resources. It is important that a more widespread public opinion be rallied for such an application of the American ideal to the personnel system throughout our government. But equally important, and indeed a part of the task of stimulating and rallying public opinion, is the indication of tangible procedures, methods, and policies to be adopted in order to make these ambitions a reality. It is here that we believe your commission has a unique opportunity for educating both the public and administrators, and it is for this reason that we are submitting these concrete proposals.

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Law-Making in the United States. By Harvey Walker. (New York: The Ronald Press Company. 1934. Pp. 495.)

Famous as a nation of law-breakers, the United States is equally noted as a nation of law-makers. We know, of course, that we are not really as unbridled as we try to convince ourselves that we are. We view ourselves in distorting mirrors; we produce preposterous statistics concerning the number of statutes that our legislatures enact during a year, by mislabelling as a "statute" every appropriation, every petty revision, every local and temporary measure. And we produce even more erroneous impressions when we call every act of a city council an "ordinance." But even if we take the figures with a bulging bucket of salt, the 1933 balance-sheet gives evidence that lawmaking in this country is a thriving business, if not a fine art: 600 federal laws produced during the last session; 7,000 new state "statutes"; and Heaven knows how many newborn municipal "ordinances." The enormous annual output of these ordinances can be left to the imagination when we proudly survey over fifty American cities with populations of 100,000 or more—and over 3,000 others with populations of 2,500 or more.

Professor Walker's new volume describes and explains the processes of our federal, state, and local legislative factories. The purpose of the book is to outline the hierarchy of law in the United States, and to describe the relationship of each type of law to the other types in our system. To accomplish this, the author divides his study into three parts. The first deals with both federal and state constitutions, and with the process by which they are originated, amplified, and revised. The second concerns the making of statutes, and discusses representative assemblies—national, state, and local. The final part is devoted to the use of the initiative and referendum and to lawmaking by executives, by administrative agencies, and by judges.

Within the first ten pages, the author plunges into a discussion of federal centralization, which he describes as "a progressively more complete occupancy by the federal government of the field of action described for it in the Constitution," thus comforting the New Dealers. He advises states-righters that such a shift of authority from the state to the federal government should not be "legally called a usurpation." Some of the citizens who frown upon the extent of the authority which has recently been assumed by the federal government may not agree as to the point at which federal "usurpation" begins. Perhaps it would be easier to reconcile the atheist and the bishop as to theology.

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The author also devotes a considerable number of pages to the subject of constitutional conventions—a particularly timely topic in view of the number of states that voted this autumn on the holding of such conventions. State commissions and citizens' organizations which are sponsoring proposals for constitutional conventions in California, Georgia, Illinois, North Carolina, Pennsylvania, and West Virginia should find this chapter a useful manual for ready reference. Few textbooks on American government or legislation have so thoroughly treated this relatively infrequent process of American government.

The introductory chapter in Part II is an excellent synthesis entitled "The Formulation of Public Opinion." The reviewer found those pages concerning "the legislative mind" especially readable. Here is a real, although a brief, description of legislative life, and Dr. Walker should be complimented for avoiding the usual error of wholesale condemnation of the part played by lobbyists and by the special interests which they represent. To offset the influence of the pressure groups, Professor Walker urges that legislative reference bureaus be established in all of the states in order to furnish legislators with the uncolored facts and the research material needed for intelligent lawmaking—a position in which he has the support of the American Legislators' Association and its Interstate Reference Bureau.

His description of the work of the state legislative reference bureaus in Chapter X is timely and forward-looking. The legislative reference movement is certain to spread, and the author's treatment of this interesting development is well worth reading.

Professor Walker emphasizes the strength and importance of the lobby by recalling a study made under his direction concerning the sources of bills introduced in the state senate in a recent session of the Ohio general assembly. Of the 267 bills introduced, 70 had their origin with legislative committees and individual members, 78 originated with governmental officials in departments, and the origin of 119 was traced to private interests. About one-third of the privately inspired bills became law.

For decades, many students of government have urged the unicameral system as a potent remedy for legislative ills. Even those unicameral advocates who recognize the fact that the problem of personnel is more fundamental than the problem of structure believe that the one-house legislature would go far toward improving the personnel. The author of this review has discussed this topic with many professors of political science and with many legislators of comparable intelligence and intellectual integrity. He concludes that it is a striking fact that the professors are almost unanimously in favor of the unicameral legislature and that the legislators are almost unanimously skeptical. Although Professor Walker's presentation of the one-house plan is relatively unbiased, he

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quotes at length from studies which illustrate the shortcomings of bicameralism without calling attention to the studies which take the opposite viewpoint—and which analyze the failure of unicameralism when it was used in Georgia, Pennsylvania, and Vermont.

Of course, a combined textbook and reference-book of this character is partly a task of authorship and partly a work of compilation, and usually such a volume goes through many months of revamping and revision after its subject-matter is practically completed. This book is no exception to the general rule, and consequently it does not enlarge upon the subject of lawmaking under the New Deal; the current executive and administrative assumption of legislative powers might be more extensively discussed in a book begun today; and the many significant legislative investigations—both state and national—which have been made since 1932 might be given more space. But a study of government resembles a study of the stock market. The author is rather a photographer than a prophet; and Professor Walker has made a serviceable contribution to the literature of lawmaking.

HENRY W. TOLL.

American Legislators' Association.

Uniform State Action. By W. BROOKE GRAVES. (Chapel Hill, N. C.: University of North Carolina Press. 1934. Pp. xii, 368.)

With great and commendable industry, the author of this book has brought together and carefully digested material relating to an astonishingly large number of agencies whose work, in varying degrees, tends to bring about some measure of uniformity in state action. Some of the topics covered in E. D. Fite's *Government by Coöperation* (1932) are necessarily discussed, but there is no serious duplication.

Two brief introductory chapters explain the need for uniformity of state action and how, in a limited way, the national constitution and government contribute to such uniformity. These chapters are followed by two that deal with uniformity through state legislation. Here appear brief, and generally fair, appraisals of the work of the National Conference of Commissioners on Uniform State Laws, the American Legislators' Association, the American Law Institute, and the American Judicature Society. The major part of the book has to do with a dozen groups of state agencies that are working for uniform action through the coöperation of state administrative agencies—some on an extended scale, others along less ambitious lines. A brief chapter on the limited possibilities of uniformity through judicial coöperation is followed by two chapters in which the author comments discriminatingly upon the tendency toward federal centralization, and stresses with commendable moderation the possibility—though not asserting the probability— that

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centralization can be avoided or checked if the states are sufficiently alert in the discharge of their duties and responsibilities, and enter wholeheartedly into the development of "a national plan" of coöperation in all the legislative and administrative fields where uniformity is "definitely recognized as being essential."

In concluding his useful and well-written study, the author submits a five-point plan to hasten uniformity. (1) Efforts should be made to stimulate more interest in the idea of uniformity among public officials both legislative and administrative. (2) A national council of state administrative officials should be created to devise ways and means of furthering uniformity. (3) Close and harmonious coöperation between organizations striving for uniformity is indispensable. (4) Without violating the proprieties, the members of every state court of record should be kept informed concerning the nature and purposes of the uniformity program. (5) An extensive educational campaign in the interest of uniform state action should be inaugurated. Appendices give a list of 150-odd national and sectional organizations of state administrative officers, and also the constitutions and by-laws of five representative organizations.

Despite the skillful marshalling of this impressive array of agencies working for uniformity of state action, the reviewer closes the book more convinced of the inevitability of national centralization than of the effectiveness of the plan suggested for avoiding it.

P. ORMAN RAY.

University of California.

Federal and State Control of Banking. By THOMAS JOEL ANDERSON, JR. (New York: The Bankers Publishing Company. 1934. Pp. 514.)

Professor Anderson's book deals with governmental regulation of banking in the United States, and emphasizes the difficulties of governmental regulation in a federal system. The book is written by an economist, but deals with the political aspects of a subject that contains economic and political phases. It treats primarily of control over banking, and only incidentally of control over money, some discussion of currency being necessary because of governmental utilization of banking institutions as media of currency issue.

The emphasis throughout the book upon bank deposits as a form of money should be helpful to those who studied their economics in the last generation, and so ought the emphasis upon banks in our modern system of exchange currency. Constitutional and political questions receive the major portion of the author's attention, however, and the main interest of Professor Anderson is that of showing that a unified banking system under national control is politically and economically desirable, and that it is constitutionally possible.

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An adequate summary of the historical development of banking, based upon the standard works, brings out the point that both the first and second banks of the United States were very useful banking and governmental institutions. The historical summary also leads to the conclusion that the conflict between federally chartered and state authorized banks has not abated, being about as bitter now as it ever has been. The country has tried federal banks with but few state banks, federal and state banks, state banks alone, national and state banks, and now state banks, national banks, and federal reserve system banks that include all national banks and some state banks but only a minority of all of the nation's banking institutions. Chapters IV–VI are perhaps of the greatest interest to political scientists, dealing with national-state conflicts under the federal reserve system that arose in connection with par remittances, trust work, and state taxation of shares of stock of national banks. In these three chapters, the federal system is seen at its worst, with economic, political, and constitutional confusion and struggles making a very blurred picture indeed.

The several possible constitutional bases for a unified national control over a banking and currency system are examined at some length in the closing chapters of the book, and although some of the discussions are a little drawn out, such as that of interstate commerce, they are generally sound, and in conclusion all come to the same end, namely, that Congress can constitutionally take over control over all commercial banking institutions in this country.

Professor Anderson has written a very useful book and has done it well. It is the kind of a book that political scientists ought to read. Much of the work represents a careful and competent summary of currently available materials, but some portions of it represent original work. Teachers of constitutional law, American government, and government and business will find the volume worth their time.

OLIVER P. FIELD.

University of Minnesota.

Das Englische Kabinett System. By HERMANN SAVELKOULS. (Munich: C. H. Beck. 1934. Pp. 436.)

It is not often that students of British government can turn to books on this subject written by Continental Europeans. Frequently, the contributions in this field made by the writers of Germany and Austria, for example, have been more in the nature of formalistic *Staatsrecht*, and not political science as Americans understand that term. Mr. Savelkouls, however, has written a useful book in which he gives an account of the cabinet system in England, using the methods of the political scientist.

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He deals with the history of the cabinet system, the selection of the prime minister, the party system, party organization, democracy in England, the power of the cabinet, government, administration, legislation, limits on the power of the cabinet, and concludes with a discussion of the conventions of the constitution. The author uses the historical, descriptive, and comparative methods in treating these topics. Frequent references are made to practices in Germany, France, and the United States. Unfortunately, the references to the latter indicate that the author, in common with many Europeans, has not a thorough knowledge of American government and politics.

Mr. Savelkouls is full of praise for the way in which the English government has developed; in particular, for the manner in which the cabinet system has functioned. The reasons for his admiration are mixed. One is that most of what is good in British government is said to be of Germanic origin and is, therefore, Nordic and not Latin. The author contrasts what he considers the success of the parliamentary system in England with its failure on the Continent. The system has succeeded in Britain largely because there have been no fundamental differences between political parties. The various political organizations have thought and acted in national terms. They have not insisted upon the realization of their own selfish ends. The author feels that even the Labor party has been bound by tradition in this regard, although he points out that this party is now showing a tendency to "fill its knapsack with Continental theories." With a two-party system, and with political groups acting for the national welfare, the cabinet system has worked well. But on the Continent in general, and in Germany in particular, political parties have not shown either the ability or the desire to think in broad terms. The result has been that democratic parliamentary government has disappeared in the confusion of conflicting party interests.

The author finds that the British cabinet system has functioned well, even though the peculiarities of the country's electoral system have often made for unfair results at the polls. Notwithstanding these inequalities, he feels that the British should not replace the existing electoral procedure with any type of proportional representation. Germany's experience with that device, he considers, should serve as a warning to any countries contemplating its introduction.

According to Mr. Savelkouls, Hitler's Third Reich is not the only place where the "leadership principle" (*Führer Prinzip*) is one of the fundamentals of government. This principle is of Germanic origin and exists in Britain as well as in Germany. In the British system, it is the prime minister who is *der Führer*, and the people are his "followers." The author's laudatory comments concerning the "leadership principle" would no doubt be approved by a Koellreuter or a Carl Schmitt, but this

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comparison of Hitler's position in German government with the prime minister's position in Britain is a strained one.

There are several errors of fact and of dates, but they are of a minor character. A brief bibliography is included, but an index is unfortunately missing.

HARLOW J. HENEMAN.

University of Michigan.

British Public Utilities and National Development. BY MARSHALL E. DIMOCK. (London: George Allen and Unwin. 1933. Pp. 349.)

For advocates of national economic planning and professional students of public administration alike, this able survey of British public service undertakings is of timely importance. In the author's own words, his study represents an effort to "re-unite economics, public administration, law, and philosophy" in describing and appraising the wide variety of experimentation in which the British state is engaged in the search for institutional formulae that will combine progressive technical management with effective social control in the public utility field. Based upon extensive first-hand observations, the investigation includes in its scope both local and national public utility enterprises, primary emphasis being placed upon the railways, road transport, telegraphs and telephones, electricity generation and distribution, and radio broadcasting.

In a study covering so broad a sweep as this, the author's admitted purpose was rather to compare for the layman the merits of the major types of public management and control evolved by British administrative ingenuity than to attempt an intensive analysis of their technical operation. Although the presentation of so wide a range of intricate subject-matter might have been materially aided by some use of organizational charts or diagrams, the reviewer has nothing but admiration for the skill with which the investigator was able to bring unity of interpretation to his task.

As one follows Professor Dimock's story chapter by chapter, the important differences between British and American experience in dealing with the public utility problem clearly emerge. The reader is made to realize how much easier it has been for the British to tackle the problem pragmatically than has been the case in this country. Legislative supremacy and the absence of constitutional federalism have permitted Parliament to "grant any powers or impose any restrictions it pleases upon public service undertakings, and, unlike the United States, the courts will not nullify the legislator's control." The British railways, for example, have been regulated, none too successfully, by the establishment of legislative standards and the creation of a supervisory rates tribunal; the telegraph and telephone services have, on the whole, been admirably

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operated by a government department under Treasury control; while in the recent development of national electricity planning and radio broadcasting the device of the "public utility trust" (independent public corporation) has been utilized. It is this last type of control which, in the author's judgment, appears for the time being to hold the greatest promise. It is "capable of considerable variation" and "combines elements of socialization with aspects of private management, initiative, and elasticity that should be preserved."

Not the least suggestive of Mr. Dimock's discriminating observations are contained in his concluding chapter. Here he postulates a tentative philosophy of public service management for the future. Its essential elements embrace (1) the necessity for rediscovering the guild idea of coöperative control; (2) the adaptation of civil service methods to non-profit, commercial enterprises; and (3) the evolution of suitable public relations techniques (advertising and salesmanship if you will) to socialized public service undertakings. "Freedom of detailed administration [from Treasury domination and irrelevant Parliamentary interference], coupled with unified responsibility for general policies—this is the desirable formula" (p. 318).

It is not without significance that the Roosevelt Administration has recently sent to England some of its planning experts (notably Director Lilienthal of the TVA) to observe at close range the quiet but steady progress toward the planned use of national resources which has since the war been furthered by a succession of British governments, conservative and otherwise. Professor Dimock's volume constitutes an indispensable general introduction to the social implications of this development.

WALTER R. SHARP.

University of Wisconsin.

Egypt Since Cromer. By LORD LLOYD. Volume II. (London: Macmillan and Company. 1934. Pp. viii, 418.)

In this second volume of *Egypt Since Cromer*, Lord Lloyd continues the story of Anglo-Egyptian difficulties from 1919, when the Milner Mission commenced its investigations. In an introductory note, he pauses to deplore the weak foolishness of recent British policy toward Eastern peoples: the benevolence grounded on knowledge and experience which should be the basis of British relations with the masses in Egypt or India or Palestine was being discarded in favor of "a Western schoolman's theory"—self-determination. What could be more dangerous than the principle of universal democracy? "Are the Chinese peasants rejoicing in their new-found freedom and independence?" The masses want not independence; "they do not understand the machinery by which our constitutions work: they neither comprehend nor sympathize with the

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doctrine of responsibility." The real problem is administrative, not political. "The first duty, almost the only duty, of government is good administration. It has no responsibility for the forcing of constitutional development." But unfortunately a "hypnotic state induced by the constant repetition of transatlantic doctrines" had prevailed. Britain had by the Declaration of 1922 recognized, with reservations, the independence of Egypt instead of adopting the penetrating, brilliantly simple and logical suggestion of Lord Allenby. I would suggest, wrote Allenby, that Turkey should "be required to cede to H. M. G. all prerogatives and authority over this country formerly enjoyed by the Sultan as suzerain . . . a right of suzerainty based on conquest would have considerable moral [*sic*] authority. . . ."

The result of self-determination was confusion. The first fruits of the harvest were only sullen dissatisfaction and hostility. The aftermath was dreadful: political murders, culminating in the assassination of the Sirdar, Sir Lee Stack, in November, 1924.

In 1925, Lord Lloyd was selected to succeed Lord Allenby as High Commissioner. Lloyd had disapproved of the Declaration of 1922, but accepted office determined to support it. His emphasis, however, would "leave no doubt in any minds that whilst the measure of independence granted under the Declaration must be real, the reservations and Egypt's respect for them must be equally real and our intention to see them respected made evident." There should be a deeper recognition of Britain's "responsibilities"; Lloyd is fond of the word.

The story of Egyptian politics, of Zaghlul, of Adly, Sidky, Ziwar Pashas, is told in simple, lucid, frequently beautiful prose. The several Anglo-Egyptian negotiations for a treaty of alliance attempting to reconcile Egypt's demand for independence with Britain's four reservations are set forth with copious excerpts from documents. As Lloyd himself writes, "if I shall hardly be able to escape from imparting a more subjective flavor to my narrative, and adopting a more personal tone. . . . I can only hope that the disadvantage to science will be balanced by a heightened dramatic interest."

Dramatic also is the author's account of the forcing of his resignation in 1929 by Arthur Henderson and the Labor Government. The chapter is styled "Socialist Intervention."

The volume is of compelling interest. Not the least part of its value lies in the insight given into the workings of an honest Tory mind. Cromer's policy in Egypt wins the admiration of Lord Lloyd: it was clear-cut and comprehensible. As for "Cromerism," the author says, "I found, and still find, it impossible to understand what that curious phrase means."

HERBERT W. BRIGGS.

Cornell University.

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Curzon: The Last Phase, 1919–1925. A Study in Post-War Diplomacy. By Harold Nicolson. (Boston and New York: Houghton Mifflin Company. 1934. Pp. xvi, 416.)

Harold Nicolson, the son of Sir Arthur Nicolson, Lord Carnock, one of the principal officials in the British Foreign Office before and during the World War, himself served for many years in the Foreign Office and the foreign service. He has previously published a brilliant life of his father (1920), as an illustration of pre-war diplomacy, and a successful volume on the peace-making of 1919 (1933). The present volume completes a trilogy, with a study of post-war diplomacy from 1919 to 1925, centering around Lord Curzon, as foreign secretary, and concludes with an essay on the practice of diplomacy, comparing the merits and defects of professional and democratic diplomacy and foreign policy.

The opening chapter sketches briefly the earlier life of Curzon, with emphasis on the psychological and other factors which affected his character, faith, and temperament, and serve to explain in part the outcome of his tenure as foreign secretary. "Here was a man possessed of great intelligence, of flaming energy, of clear ideals, of unequalled knowledge, of wide experience; to this man was granted an opportunity such as falls seldom to any modern statesman; and yet, although in almost every event his judgment was correct and his vision enlightened, British policy under his guidance declines from the very summit of authority to a level of impotence such as, since the Restoration, it has seldom reached."

Other factors than Curzon's personality which affected the result are indicated throughout the book. For the first four years of his period in office, the control of foreign policy was in fact in the prime minister, and Curzon's advice was often overruled; while after he obtained the main direction, on the fall of the Coalition Government in 1922, the influence, authority, and international credit of Great Britain immediately revived, and Curzon personally gained a remarkable success at the conference of Lausanne in 1923. It is also suggested that the failure of post-war diplomacy may have been due largely to a general collapse of the national will in Great Britain, and that the transition from aristocratic to democratic diplomacy brought out the vices of both systems and the virtues of neither.

Most of the work deals with the problems of the Near East, in which Curzon was primarily interested: Smyrna, Persia, Egypt, Chanak, and the Lausanne Conference. There are chapters on diplomacy by conference, reparations, and "The Last Battle." In the terminal essay, after discussing the dangers and merits of democratic and professional control of diplomacy, the author supports the new tendency toward democratic control of foreign policy, but believes this should go along with professional conduct of diplomatic negotiations. He fails to recognize that dip-

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lomatic negotiations may control the policy, although his own account of the Lausanne Conference shows how much Curzon's masterly conduct of procedure influenced the final outcome.

Based on intimate knowledge, and written in clear and forcible language, with occasional flashes of brilliance, the work presents a careful analysis of a series of complicated problems, and offers a substantial contribution to the larger problem of the relations between diplomacy and policy.

JOHN A. FAIRLIE.

University of Illinois.

Essai sur le Travail Parlementaire et le Système des Commissions. BY JOSEPH-BARTHÉLEMY. (Paris: Librairie Delagrave. 1934. Pp. 373.) Vol. V of Bibliothèque de l'Institut International de Droit Public.

Every observer of practical politics, every person who is curious for any reason as to the actual operations of legislative bodies, and every teacher, research worker, or student in the field of comparative government will find much to interest him in Professor Joseph-Barthélemy's study of the committee system in the French Parliament. The career of the author as a member of Parliament and secretary of the Chamber of Deputies, as a professor of law, and as a delegate for several years to the League of Nations (to name but a few of its most striking features), has qualified him to write on this subject with both intimate knowledge and the critical detachment gained from opportunities to study and observe other ways of doing things besides the familiar ones.

The detailed nature of the book makes any synopsis of contents impossible. The author discusses not only such general subjects as the rôle of committees in the work of Parliament and the control exercised by committees, but such matters of fact as the way in which committees are recruited, the manner in which they are organized, and the length of term of their members. From this wealth of material, only a few outstanding ideas can be selected for mention here.

The author states that in the French parliamentary system, the committees compare in importance with the Government as directors of legislative debates. From the time of the Constituent Assembly to the present day, committees have played a useful part. On the other hand, they may encroach upon the prerogatives of the Chamber as a whole, and even more upon those of the executive, thus disturbing the balance of powers. At present, the Chamber of Deputies employs two kinds of so-called permanent committees: the grand committees which serve for one year, among which the entire membership of the Chamber is divided; and other committees which do not enjoy the title "grand," and which

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serve for the period fixed by the resolution that creates them. Various special committees are established from time to time.

The discussions of the committees are secret, and no written record of them is kept. Such descriptions of committee meetings as appear in the official *Bulletin* or in the press are little more than colorless statements to the effect that an "exchange of views" took place between certain members. This does not apply, naturally, to the official report which is finally presented by a committee as a basis for parliamentary action. The report has a political significance, in that it is an expression of the attitude of the parliamentary majority, and if a bill for a law is in question, of the Government. Theoretically, bills may not be introduced by committees; but to all intents and purposes, they are so introduced.

A list of committees in the Chamber of Deputies (as of December, 1933) and in the Senate is given in a very brief chapter. Following this are special studies of those two powerful and important committees in both chambers, the committees on foreign affairs and the committees on finance. Emphasis is placed, of course, on the work of these committees in the Chamber of Deputies.

No formal conclusions are drawn. The last pages of the book are given, instead, to "some remarks," which present in the guise of epigrams the author's opinion that despite the imperfections of the committee system, the system itself is useful, and even indispensable, to the French parliamentary chambers.

The entire volume is spiced with wit and colored with apt and entertaining illustrations drawn from every period of history, including the present. The final word is the familiar admonition with which, like Cato's diatribe against Carthage, every volume on every phase of government might well be concluded: "No mechanism can replace what Montesquieu, in his antiquated style, called virtue. There is no charter which excuses men from being just and wise, and which makes them happy and peaceful despite their follies."

FREDERICK F. BLACHLY.

Brookings Institution.

Le Contentieux Administratif des États Modernes. By STRATIS ANDRÉADÈS. (Paris: Librairie du Recueil Sirey. 1934. Pp. ix, 587.)

The query has often been raised whether in such countries as England, the United States, and Belgium, which do not have special administrative courts, individual rights are as effectively protected as in France, where administrative tribunals check excesses or abuses of power. In an effort to answer this query for those interested in public administration, Dr. Andréadès presents a study of the essential statutory provisions and some of the administrative practices of the following countries: France,

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Germany, Austria, Spain, Hungary, Italy, Switzerland, Czechoslovakia, Yugoslavia, Belgium, England, Rumania, and the United States.

The primary purpose of the author is to describe administrative law and procedure, and to deal with the external forms and rules of administrative action. A brief survey is presented for each country of the recourse for the protection of individual rights before administrative tribunals and the ordinary courts for excess or abuse of power. The classification of governmental systems throughout the study is as follows: the French system, with complete separation of administrative tribunals and ordinary courts and the establishment of an administrative hierarchy; the Belgian system, which aims to secure a separation of administrative and judicial functions, with controversies affecting public officers settled by the ordinary courts; and the Anglo-American system, in which administrative law is largely developed through the review of administrative action by the ordinary courts. In the judgment of Dr. Andréadès, the Rumanian administrative system has some features which make it different from any of the above classes. There is an attempt to establish and develop a system of administrative law similar to that of France, leaving, however, the determination of issues as to the excess or abuse of power to the ordinary courts.

The study centers primarily around the administrative courts of France, with the separation of administrative and ordinary courts. A rather superficial treatment is given of French administrative law, following the standard authorities on the subject, with an analysis of the kinds of recourse before administrative tribunals. Special consideration is given to the Council of State and the Tribunal of Conflicts through which a virtual supremacy is established in all matters pertaining to the scope of public law. The French administrative system is considered as furnishing a standard by which all other systems of administration may be evaluated. In the opinion of the author, it is in such a system alone that there is a true separation of powers.

Though an account is included of the German and Austrian administrative systems, the treatment is largely confined to administration as organized and sanctioned under the post-war constitutions which have recently been discarded.

In the consideration of administrative law in Anglo-American countries, Dr. Andréadès follows essentially, for the English system, the treatment of Professor Robson in his *Justice and Administrative Law*, noting the extent of delegated legislation as developed in England, with some of the consequent limitations upon judicial review.

As no single work covers the same ground in the United States, the author found difficulty in analyzing the remarkable development of administrative tribunals and the extensive scope of delegated legislation

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in the United States. Primary emphasis is given in this section to government liability for torts. Some misleading impressions are given of the liability provided by statutes and by decisions in state and federal courts. Such outstanding features as the growth of the practice and procedure of industrial accident boards, public utility commissions, and of numerous other administrative boards and commissions seem to have escaped the author's attention. Confining the treatment almost exclusively to federal statutes and procedure gives also a very inadequate impression of the present tendencies in American administrative law.

One-fourth of the volume is devoted to a consideration of the development of the administrative law of Greece—a contribution which is noteworthy. In view of the fact that a separate administrative court has existed in Greece for only a few years, the analysis is necessarily confined largely to statutory and administrative rules and orders. The general result of the studies of the author appears to be a judgment to the effect that the only efficacious recourse for the review of administrative action is a system which provides separate administrative tribunals for the review of administrative action and a supreme administrative court.

From the viewpoint of statutory provisions and administrative rules and orders establishing systems of administration and providing for review of administrative action, the volume presents a useful survey of an important phase of modern public administration.

CHARLES GROVE HAINES.
University of California at Los Angeles.

The Origins of the International Labor Organization. EDITED BY JAMES T. SHOTWELL. (New York: Columbia University Press. 1934. 2 vols. Pp. xxx, 497, xii, 592.)

It is, no doubt, permissible for the gentlemen of Geneva and the Paris Peace Conference to write about themselves, as have in times past statesmen and political leaders who have stood, for a moment at least, on the spot where history is being made. Inevitably, however, there creeps into such writing the flavor of apology, though it may be defense of the record in the highest meaning of the term. The volumes here under review constitute in all respects the most significant publication available on the origins of Part XIII of the Treaty of Versailles and the International Labor Organization. It is intended to be, in all probability, a definitive work on the origins of the labor set-up of the League System. Whether it is such, time and further scholarship alone will reveal. But as a definitive work on the labor aspects of the Peace Conference, it is somewhat marred by the inclusion of a considerable body of splendid material on the conditions of labor and industrial philosophy in the United States.

While the second volume consists entirely of documentary material

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of great value, the first consists primarily of a series of essays by the men who should know more than any others about the origins of the Organization. Among the contributors are H. B. Butler, the present director of the International Labor Office; Sir Malcolm Delevingne, who, with G. N. Barnes, led the defense of the British plan for the Labor Organization in the Peace Conference; Ernest Mahaim of Belgium, who, since late in the last century, has been a leading advocate of the international protection of workers; Edward J. Phelan, an assistant director of the Labor Office and one of the British delegation at the Paris Conference; and Professor Shotwell who, according to the evaluation of his contributors, did as much or more than Henry M. Robinson and Samuel Gompers, the American representatives on the Commission which drafted Part XIII, to effect the compromises which permitted a text to be agreed upon. Professor Samuel McCune Lindsay and others have made remarkable contributions to the work, but these were not active in the Peace Conference. Miss Carol Riegelman's discussion of war-time trade-union and socialist proposals is probably the best available.

A wealth of data is published for the first time in this work. This is because the material is drawn from the personal experience of such men as Butler, Phelan, and Delevingne. The work of Professor Shotwell in the Peace Conference is told by those who saw him in action at Paris in 1919. Mr. Phelan, sometimes regarded as the most astute and polished of all the League bureau-diplomats, has come to the conclusion that the time has now arrived to give his own account of what happened at Paris. This he does, as the heaviest contributor, with a degree of ingenuousness which may be surprising, to say the least, to those who have had personal experience with him in the International Labor Office.

The conclusion is hardly to be avoided that the work is directed in a large measure toward the American audience. This is indicated by the inclusion of documentary material on American labor problems (Vol. II, Pt. IV) and the essay by Professor Lindsay. But it is also demonstrated by the care with which is presented the case for the autonomy of the Labor Organization in relation to the League. This question has become one of the routine matters of discussion in League and Labor Office legal circles. The intentions of the framers of Part XIII, and of the Peace Conference, according to this work, were not made entirely clear, but the indications are that only an ineffective case can be made for a legally necessary identity of membership between these two institutions of the League System. The amendment of Sir Robert Borden of Canada is labored by the authors to show in effect that Sir Robert was interested only in the equal status of the Dominions with other members of the League and Labor Organization (Vol. I, pp. 210–11, 218–20), and not in providing that only members of the League may be members of the

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Organization, as Article 387 of the Treaty might imply. The importance of this argument in the present discussion of the legal basis of American membership in the Organization is clear. In his eagerness to make this point, Professor Shotwell has perhaps over-stated the autonomy of the Organization in the procedure of amendment of the Treaty when he omits any reference to the essential rôle of the Council of the League. (Vol. I, p. xxv). Finally, of course, this issue of interpretation will be settled by international practice. But it is an issue which here has been attacked by the historical method rather than by the literal meaning of words.

In passing, it may be remarked that it is only human that the authors should lack a keenly critical attitude toward the work of the Peace Conference, for most of them were part of that historic diplomatic gathering.

FRANCIS G. WILSON.

University of Washington.

Statelessness; With Special Reference to the United States. BY CATHERYN SECKLER-HUDSON. (Washington: Digest Press. 1934. Pp. xvii, 332.)

Philip Nolan, "the man without a country," at least retained his nationality. He was not, therefore, in the plight of the countless men and women throughout the world who, usually through no fault of their own and frequently without any voluntary action on their part, have found to their dismay that they are stateless—without nationality. Gauged by the almost entire absence of any scientific treatment of the subject, they were the "forgotten" men and women. Professor Seckler-Hudson, has entered the field and made a scholarly and outstanding contribution.

In this work, the author, after defining nationality and statelessness, describes in detail from the point of view of the United States three main categories into which stateless persons may be divided. These include some persons who may technically retain their nationality, but who are incapable of effectively exercising the rights and privileges pertaining to it. Because marriage is a prominent cause of statelessness in individual cases, the first group includes a description of those whose condition is a result of marriage. The second consists of adults whose status has arisen other than through marriage, while the third group relates to minors. Twenty-seven conditions which may cause statelessness are pointed out in the first group, thirty-five in the second, and twenty-four in the third—a total of eighty-six different conditions which may cause statelessness. At first thought, it might seem almost inconceivable that there should be so many situations capable of producing a loss of nationality or its absence, but the author's profuse references and annotations to municipal and foreign nationality laws, arbitrations, judicial decisions,

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periodical and other literature, and illustrative incidents amply support her classification.

Professor Seckler-Hudson concludes with some suggestions for a new nationality system of the United States, formulated with a view to eliminating the principal conditions which cause or perpetuate statelessness. They include the following: (1) provision of United States citizenship for the wife of an American citizen if she would otherwise be stateless, and citizenship for former American women who lost citizenship through marriage; (2) elimination of mere absence from the country as a cause of statelessness; (3) elimination of the effects of statelessness for residents without nationality; (4) abolition of complete denationalization by governmental action; (5) adjustment of our deportation system so as to prevent injustices of statelessness from falling upon helpless individuals; (6) extension of citizenship to illegitimate children of American parents; (7) adoption of the principle that a child should not suffer loss of nationality because of any act of the parent; (8) extension of United States citizenship to the foreign-born children of American fathers where the latter never resided in the United States, if the children would otherwise be stateless; and (9) provision of citizenship for foundlings. Whether these recommendations shall be adopted is, of course, a matter for legislative consideration. It is possible that a clarification of the situation may result from the work of the Committee on Nationality consisting of the Secretary of State, the Attorney-General, and the Secretary of Labor, appointed by President Roosevelt on April 25, 1933, to review the nationality laws of the United States, to recommend revisions, and to codify those laws into one comprehensive nationality law for submission to the Congress.

The format and typography of this work are especially pleasing, the appendices of laws, rules, and other pertinent material helpful, the bibliography comprehensive, and the index satisfactory. It is a worthy initial number of the American University Studies in International Law and Relations, published under the direction of an editorial board of which Ellery C. Stowell is chairman. As stated by Dr. James Brown Scott in the introduction, this study in nationality and conflict of laws is indispensable to teachers of international law, to officials charged with its administration, and to the foreign officers of each and every civilized country, and is especially indispensable in the United States. Teachers of political science will find it of particular interest.

Washington, D.C. HENRY B. HAZARD.

Post-War France. By PAUL VAUCHER. (London: Thornton Butterworth, Ltd. 1934. Pp. 256.)

Those students of government who find, as many do, that a peculiar fascination attaches to acquaintance with French practical politics will

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welcome the addition during the present year of Professor Vaucher's little volume to the Home University Library. The contents of the book are divided almost exactly to the page into two equal parts treating respectively of the domestic and foreign affairs of contemporary France. This division doubtless corresponds in a general way to the special interests of the author, who is professor of modern French history and institutions in the University of London. However, the emphasis of the little book is in a sense on history rather than institutions. The primary object of the volume is stated to be that of defining "the part played by France in international affairs after the War." Institutions and domestic problems being treated with a definite view to their bearing on diplomacy, inclusion and exclusion of matters of internal politics become peculiarly a question of individual choice. At the same time, some will regret the omission of things like the problem of Alsace-Lorraine and the post-war relations of the government and the Vatican.

The first half of Professor Vaucher's volume, which treats of domestic affairs, consists of three chapters. The first, which is entitled "Political Institutions," passes in review such aspects of the French governmental system as governing classes and parties, the legislative process, the electoral system, ministerial responsibility, and the administrative system. A second chapter is an essay on French political parties. To the uninitiated it should serve as an enlightening introduction and to the initiated as a reminder of the infinite variety and interest of the play of public opinion and political activities in France. The third chapter, entitled "Economic Policy," is not unnaturally devoted in large measure to finance. Well buttressed with figures, it is an especially solid chapter.

Four chapters which compose that half of the book dealing with foreign affairs present a more or less conventional account, from the French point of view, of current events in Europe since the War. Beginning with the reparation problem, the account proceeds through the stages of Locarno and "Briand's last effort" to the existing world crisis. A chronological table serves as an introduction to the small volume, and a sympathetic appraisal of French attitudes during thirteen momentous years as a conclusion.

R. K. Gooch.

University of Virginia.

BRIEFER NOTICES

AMERICAN GOVERNMENT—NATIONAL, STATE, AND LOCAL

In *The Law of Citizenship in the United States* (University of Chicago Press, pp. 221), Dr. Luella Gettys has performed an invaluable service in presenting, for the first time since the publication of Van Dyne's

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treatises early in the century, an adequate survey of American legislation dealing with the acquisition, retention, and loss of nationality. She has aimed "to bring to date in systematized form the statutes, decisions of courts and international claims commissions, and departmental opinions, rules, and regulations" dealing with American citizenship. Quincy Wright characterizes the result accurately in his Foreword: "The book is unquestionably the most comprehensive treatment which has appeared on the subject." The volume takes up in turn, with complete documentation, the general principles of American citizenship, its acquisition *jus soli* and *jus sanguinis*, individual naturalization, status as affected by marriage, and collective naturalization. An "addendum" summarizes the terms of the act of May 24, 1934. Not least among the merits of the volume are its excellent organization, its readable style, and its numerous (and at times highly entertaining) excerpts from important judicial decisions. There is an extended bibliography and a list of leading cases. The major recommendations in the concluding chapter should provoke fruitful discussion: that Congress should make individual merit, regardless of race, the test of fitness for naturalization; that pacifists who, in the phrase of Justice Holmes, "believe more than some of us do in the teachings of the Sermon on the Mount," should not be barred from citizenship by the federal courts; that dual nationality should be prevented by international agreement; that further efforts to secure uniformity of nationality laws by multilateral conventions should be initiated; and that the United States, in the interest of clarity and consistency of practice, should adopt a comprehensive code of citizenship laws. Attention might well have been given in the volume to administrative practices in the execution of existing legislation, and perhaps to the psychology and sociology of citizenship. But within its limits as a study in public law, the work is excellent and deserves a wide market.—FREDERICK L. SCHUMAN.

National Taxation of State Instrumentalities (pp. 10), by Alden L. Powell is one of four pamphlet studies of recent appearance, bearing a common imprint (Urbana, Ill.). Powell's study is an historical and analytical inquiry into the immunity of state agencies from national taxation. The history of the doctrine is traced, with particular emphasis upon judicial decisions and administrative rulings which have limited the scope of its application. Under the title of *Judicial Administration in Mississippi* (pp. 13), Pressly S. Sikes makes a critical analysis of the organization and functioning of the court system of Mississippi. Comprehensive suggestions are made for the reorganization and simplification of the judicial system. A state judicial council is recommended. In *Financial Administration in the States of Illinois, Ohio, and Indiana* (pp. 24),

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Max M. Sappenfield makes a comparative and critical survey of the custody and expenditure of public moneys in three states. Custody of funds, preparation of the budget, control of expenditures, and auditing are treated in some detail. Revenue systems are not considered. *Local Government and Administration in Louisiana* (pp. 15), by Roderick L. Carleton, is a study of parishes and municipalities in Louisiana. Present local organization is criticized as based upon population and area rather than upon functions and services. Suggested improvements include a higher degree of state supervision of local affairs, particularly in the field of finance, and the establishment of responsible executive authorities in local government. A state constitutional convention is recommended as the only practicable means of bringing about necessary changes.—CLYDE F. SNIDER.

Forty-Two Years in the White House (Houghton Mifflin, pp. xii, 332), by Irwin Hood ("Ike") Hoover, is, we are assured by the publishers, precisely such a book as Samuel Pepys might have written had he been chief usher to ten presidents of the United States. This may or may not be true, but there is no doubt that Mr. Hoover's racy account of his observations and experiences in the Executive Mansion through four decades is an entertaining and intriguing book. Nowhere else are the presidents, their families, and their friends so fully and frankly portrayed as human beings; and while a great part of what is recorded is merely harmless and not particularly significant gossip, there are plenty of touches which throw considerable light on the politics and administrative policies of the period. Planning to retire in 1935, Mr. Hoover had completed his story through the Taft administration at the time of his death. His isolated chapters and rough notes dealing with the more recent years were put into shape by other hands.

Documents of American History (F. S. Crofts and Co., pp. xxi, 450, 454), edited by Henry Steele Commager, is the most ambitious attempt thus far made to bring together between the covers of a single book (the two volumes are bound in one) the fundamental written sources of American history from the age of discovery to the present. Nearly five hundred selections are presented, starting with the privileges and prerogatives granted to Columbus by the Spanish sovereigns in 1492 and closing with the anti-war treaty of non-aggression and conciliation of June 15, 1934; almost one hundred, indeed, are drawn from the period since 1914. Brief introductory notes are supplied by the editor; also selected bibliographies; and the use of a large double-column page offsets the unavoidable disadvantages of rather small type. One may concur in the prediction of President Dixon Ryan Fox, in an editorial foreword to the book, that

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"Commager's *Documents* will be cited everywhere as a convenient form in which most basic sources of our political history may be consulted."

The *Political Paradox* about which Harry Frease, past president of the American Patent Law Association, writes in this book (Winston Co., pp. xiv, 258) seems to be the sight of our "Jeffersonian" Mr. Roosevelt doing the most "Hamiltonian" things. A paradox even more ingenious is that of the author in elucidating the convenience and necessity of great political measures from cases decided by the Supreme Court. For example: the N.R.A. is an unconstitutional use of the power of Congress over commmerce; therefore such regulation of business is not statesmanship. Again: federal regulation of stock exchanges is almost certainly constitutional, therefore it is the only way out of the depression, or, as Mr. Frease has it, the "revulsion."

In 1933 the faculty of the University of Chattanooga began a program of studies on the government of Hamilton county. Hindered for a time by lack of funds, the work was continued with C.W.A. aid, and the results are now being published. University of Chattanooga Bulletin, Social Science Studies, Vol. I, No. 1, July, 1934, the first-in-a-series-of-bulletins, contains three studies: "Government and Finances of Hamilton County," by Frank W. Prescott; "Property Tax in Tennessee with Special Reference to Tax Delinquency," by T. Levron Howard; and "A Comparative Study of Chattanooga and Hamilton County Teaching Staffs," by Paul L. Palmer. The studies deal competently with their subject-matter, and are in each case accompanied by numerous charts and tables. The first two present recommendations for legislation.

The American Library Association has issued a mimeographed *Guide to the Official Publications of the New Deal Administrations* (pp. 113), compiled by Jerome K. Wilcox, associate reference librarian of the John Crerar Library, Chicago. Some seventy pages comprise a check-list of the mimeographed and printed official publications of all the emergency administrations from March, 1933, to April 15, 1934, and one of the two appendices presents a partial list of state C.W.A. publications of the same period. Practically all of the materials listed are on file at the John Crerar Library, and are available for inter-library loans.

FOREIGN AND COMPARATIVE GOVERNMENT

In *The Maritimes and Canada Before Confederation* (Oxford University Press, pp. xi, 328), William M. Whitelaw gives a detailed and painstaking historical study of the attempts to form a political or economic union of the three separate colonies of New Brunswick, Nova Scotia, and Prince Edward Island from their inception in the eighteen-twenties to their

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failure in the 'sixties. He also traces the attitude of these colonies and of Canada toward the simultaneous proposals for a federation of all the British colonies, and the policy of the Colonial Office toward both projects. The ultimate failure of the lesser and the long postponement of the wider scheme were caused by the lack of common interests and the strength of provincialism. Advocacy of either plan was confined to a small number of politicians, editors, and business-men who hoped to benefit from it. The majority of the population were apathetic or indifferent, and few even of the politicians who really believed in either proposal were willing to run any political risks in its advocacy. The maritime colonies were geographically remote from Canada and lacked railway communications with it and with one another; they prided themselves on greater loyalty to the Empire and on better racial stock; and their trade was principally with the United States or with Europe. Intercolonial trade was small, since the products of the colonies were competitive rather than complementary. Canada was interested in Western expansion, and owing to its railway communications with American ports was not vitally concerned with the construction of an intercolonial railway save as a means for facilitating its defense against the United States. This last point made no appeal to Nova Scotia and Prince Edward Island, since they relied for defense upon the British fleet. As regards a unitary government for the three maritime colonies, Nova Scotia and New Brunswick periodically discussed the idea, but each feared a diminution of its political importance. Local jealousies would also have required the building of a new capital, which would have necessitated railway construction beyond the resources of the colonies to make it accessible. Prince Edward Island consistently opposed all proposals for unification, since owing to its tiny area and population this would have meant virtual political extinction. In 1864, proposals for a Maritime union and a Dominion confederation came to a head simultaneously; but the continued opposition of Prince Edward Island finally defeated the former plan. The maritime colonies then agreed to a federation with Canada, since it would preserve part of their local identity, while they also hoped that the construction of the intercolonial railway which formed part of the scheme would augment their economic prosperity. Canada initiated these final, successful proposals to escape from the governmental deadlock produced by the unification of Quebec and Ontario, to provide an alternative route to the Atlantic, and to strengthen its powers of defense. The growing tension in American-Canadian relations during the Civil War explained these last two reasons.—LENNOX A. MILLS.

Dr. Herman Finer's *The Theory and Practice of Modern Government*, first published in 1932, has now been condensed into a single-volume

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edition with the same title, revised by William B. Guthrie with a foreword by Howard Lee McBain (The Dial Press, pp. xv, 918). Professor Guthrie has been able to present Finer's study in a single volume by the omission of much of the theoretical material (e.g., some seventy pages of preliminary discussion on the state, a chapter on federalism, and one on parliamentary reform), and by the omission of much of the material on American government and several chapters on the civil service. The loss of the excellent chapter on federalism and of those on the civil service is unfortunate, but necessary and legitimate in a revision designed as a text for the study of comparative government. Dr. Finer concentrated his attention upon the delicate mechanism of popular government, particularly as it operates in England, the United States, France, and Germany. The present edition is confined to the same limits and takes no account of shocks which popular government has sustained since 1932. Professor Guthrie has retained Finer's very useful bibliographical footnotes, and, while occasionally rephrasing for the sake of summary, has lost nothing of Finer's forceful style.—JOHN D. LEWIS.

The political revolutions which the theories of the nineteenth century exclusively envisaged were from the "left" and attempted to set up the perfect and perennial form of representative government. The German National Socialist revolution of 1933 came from precisely the opposite direction, the "right," and is typical of an upheaval in which the state is raised to the central position of authority and power and in which it attempts to eliminate social distinctions among sections, factions, castes, and classes. With this fundamental background in mind, Dr. W. R. Dittmar proceeds to examine, analyze, and discuss *The Government of the Free State of Bavaria* (Bayard Press, pp. 161) as organized by the fathers of the Bavarian republican system of 1818 and then compares it with the plan of government for the period 1919-33 in which not only the three main branches of the general government, but also the counties and rural and municipal communes, are described. Stated briefly, we have here a very good constitutional and functional study of one of the most important states of Germany, concerning which very little has hitherto appeared in English. It is written from a thoroughly objective point of view, is well documented, and contains at the end a very complete bibliography of works bearing upon the constitutional and political systems and concepts through which Bavaria passed from the "free state" of 1818 to the present time.—KARL F. GEISER.

The exceedingly useful booklet entitled *The Hitler Decrees*, compiled by James K. Pollock and Harlow J. Heneman, has been issued in a second edition (Ann Arbor, George Wahr, pp. 86). Opportunity has been seized

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to bring the collection up to date, to eliminate provisions which have been superseded, and to rearrange the selections in accordance with the later development of affairs. As in the first edition, the documents presented deal principally with the structure of the new governmental régime, omitting economic, social, and religious measures. At the present stage, this basis of selection is entirely justifiable, but the hope may be expressed that the editors will in time find it possible to make texts of the latter character equally accessible to American students.

INTERNATIONAL LAW AND RELATIONS

Although Count Stephen Bethlen's *The Treaty of Trianon and European Peace* (Longmans, Green and Co., pp. xiii, 187) is a very able presentation of the Hungarian case against the post-war arrangements of Central Europe, it must be judged by its fire and not by its billowing smoke. The work is composed of lectures, delivered in England last year by the former prime minister of Hungary and dealing with Hungarian history and the race question, the treaty of Trianon and the Danubian nations, the problem of Transylvania, and the treaty of Trianon and European peace. While the author reveals enough on the debit side of the ledger to create an impression of fairness, he omits as much that may reasonably be set up against his conclusions. The author, for example, claims that no responsible Hungarian statesman ever wanted to "denationalize by forcible means the foreign elements within" Hungary. Quite opposite statements to that effect were made by Koloman Tisza in 1875, Baron Stephen Tisza on January 16, 1905, Prime Minister Koloman Széll on June 21, 1908, and Baron Apponyi on April 13, 1907. Or we learn that "in political matters there was all through the ups and downs of Hungarian history scarcely ever any antagonism between [the Slovaks] and the Hungarians." But Bethlen fails to remember that in 1906 a number of their deputies (Juriga, Hodža, Petrovič and others) were sentenced to long terms in jail for their political activities. Or we learn that in the World War the Slovaks "never even for one minute negotiated with the enemy, and not one of them ever deserted the ranks and ran away as did the Czechs." Bethlen must surely have heard about General Stefanik and his followers. All in all, Bethlen's presentation is at best a pretty piece of theorizing, of arguing from major premises and complacently ignoring the minor facts that often change the entire aspect of the argument. This indicates that the discerning reader would do well to regard the book as an exhibit of Hungarian viewpoints, rather than as an authoritative source of light on Central Europe.—Joseph S. Roucek.

In his *Documentary Textbook on International Relations* (Suttonhouse, pp. xxvii, 848), Professor John Eugene Harley has given us a very useful

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book. It should be on the desk of every student of international affairs. As Professor C. E. Martin says in his introduction to the book, the author has "in the selection of materials and subjects included all that is necessary to secure an adequate understanding of international relations in world peace both in their larger relations and also in their detailed aspects." Part One (pp. 1–314) contains material relating to international organization and coöperation and includes much concerning the League, the Court, the International Labor Organization, the Pan American Union, and other official international organizations. Special attention is given to the position of the United States in each case. Part Two (pp. 317–516) is concerned with the pacific settlement of international disputes and presents many types of arbitrations and conciliation treaties. Special attention is here given to the Geneva Protocol and the Locarno treaties. Part Three (pp. 517–594) deals with the renunciation of war. It contains twenty-six documents concerning the Pact of Paris and its application, and also the London Convention Defining Aggression and the South American Anti-War Treaty. Part Four (pp. 597–800) has three chapters concerning limitation and reduction of armaments, ending with the recent messages of President Roosevelt. In Part Five (pp. 803–840), there are eleven selected bibliographies and one of a general nature. Anyone may disagree with Professor Harley's arrangement and emphasis, but his selections are enough to make the book a necessity. There are ample citations; and the author gives summaries and a connecting and explanatory discussion in many cases where quotation is impossible.—CLYDE EAGLETON.

The fifth biennial conference of the Institute of Pacific Relations, held at Banff, Canada, August 14–26, 1933, and the first to take place on the American continent, was devoted to the general subject of economic conflict and control in the Pacific area. Under the editorship of Bruno Lasker and W. L. Holland, the proceedings are published in *Problems of The Pacific, 1933* (University of Chicago Press, pp. xvi, 490). Among topics considered in round tables and here reported on at length are: shipping in the Pacific, instability of currency, differences in standards of living, differences in labor standards, Japanese expansion, China's reconstruction program, economic conflict and public opinion, and the United States recovery program. In addition, about half of the book is taken up with special studies on still other subjects, among which one notes particularly a discussion of rural industries in China, by H. D. Fong; a survey of Chinese government economic planning and reconstruction, by Gideon Chen; and a plan for a security pact for the Pacific area, by Yasaka Takaki and Kisaburo Yokota. Students of Far Eastern and Pacific affairs have learned to rate the biennially published proceedings of

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the Institute as among the most valuable current contributions to the fast-growing literature of their subject.

Merchants of Death (Dodd, Mead and Co., pp. viii, 308), by H. C. Engelbrecht and F. C. Hanighen, deals with the activities of the international armaments industry, and summarizes the more accessible literature with competence and objectivity. The underlying point of view is consistent with that of the senior author, who was an associate editor of *The World Tomorrow* until that periodical merged with another. Some happy discoveries are reported in the study, of which the most noteworthy is the catalogue of Francis Bannerman and Sons of New York City, a concern dating back to 1865, which is said to be the largest second-hand dealer in armaments. The authors believe that one of the operations of this house was as follows: the Spaniards in Cuba were equipped with German Mauser rifles which were sold at auction after the Spanish-American War, principally to Bannerman's, who appear to have sold them to the Panamanians, who used them to secede from Colombia. The first two chapters of the book are introductory. Chapter III takes up the story of the Du Ponts, the first of whom was able to benefit from his acquaintance with Thomas Jefferson. Chapters IV–XI inclusive carry the history of the armament interests to the World War. Chapters XIV–XVIII tell of the post-war world and recommendations for incessant vigilance in the hope of peace.—HAROLD D. LASSWELL.

The Interpretation by the Supreme Court of the United States of Certain Phases of International Law (Urbana, Ill., pp. 15), by James J. Lenoir, is a study of certain groups of cases decided by the Supreme Court for the purpose of ascertaining the extent to which that court has contributed to the law of nations. An investigation of five selected topics leads to the conclusion that the Supreme Court has contributed to the law of nations by two processes: by approving principles formulated by publicists and thus hastening their crystallization into rules of law; and by formulating, through its interpretations, new principles which through later recognition by other nations may come to be accepted as rules of law.—CLYDE F. SNIDER.

A paper entitled *International Law and German Legislation on Political Crime* (London: The Eastern Press, Ltd., pp. 21), read by Lawrence Preuss before the Grotius Society in June, 1934, discusses the different ways in which present German legislation as to treason might be applied to non-Germans for acts committed outside of Germany. The author demonstrates that, as the laws stand, there is nothing to prevent their being given such effect, and thinks that the only reason why they have

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not been so applied is the fear of the Nazi authorities that reprisals would be visited upon German nationals living abroad.

Jacob Robinson, a lawyer in Kaunas, is the author of a magisterial study of the Memel Convention entitled *Kommentar der Konvention über das Memelgebiet* (Verlag Spaudos Fondas, Kaunas, 2 vols., pp. 910 and 742). The first volume is devoted to a resumé of the early history of the Convention, followed by a comprehensive analysis, article by article, of the document itself. The second volume provides the texts of all the laws, treaties, court decisions, etc., which are in any way pertinent. The bibliography is exhaustive.

POLITICAL THEORY AND MISCELLANEOUS

The eleventh, twelfth, and thirteenth volumes of *The Encyclopaedia of the Social Sciences*, edited by Professors Edwin R. A. Seligman and Alvin Johnson (Macmillan Co., pp. xxi, 639; xxi, 716; xxii, 674), have appeared, thus bringing this invaluable work along alphabetically to articles dealing with such subjects as separation of powers and serfdom. As in the preceding volumes, each article is followed by carefully selected bibliography. Limitation of space permits a brief mention of only a few of the leading articles, all of which measure up to the same high standard as has already been set by the earlier volumes. Of especial interest to students of political science are such articles as those on city government under the headings of municipal corporations, courts, finance, government, and transit, by such authorities as Charles W. Tooke, William B. Munro, A. E. Buck, and Paul Blanchard; the article on "Nationalism" by Max H. Boehm, who deals with the theoretical aspects of the subject, and Carlton J. H. Hayes, who treats the topic historically; "Administrative Organization" by Herman Finer; "The Press" by Dexter M. Keezer; "The Philippine Problem" by Roy Veatch, who states that the complexity of the problem may force one to the conclusion "that it never will be permanently solved until the Filipino people become an independent nation able to work out their own destiny in a world which will not require them to appeal to arms either for the achievement or for the maintenance of their independence"; "Prohibition" by Clark Warburton; "Public Finance" by Edwin R. A. Seligman; "Public Opinion" by Wilhelm Bauer; "Rate Regulation" by Felix Frankfurter and Henry M. Hart, Jr., in which the opinion is expressed that the "difficulties inherent in the methods imposed by the judiciary upon administrative agencies have been intensified by the quality of their personnel," that "almost everywhere the commissions have been inadequately staffed, overburdened by detail, denied necessary technical aid, dependent on meagre salaries, and without security of tenure," and that "in the main

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the public interest has suffered from too many mediocre lawyers appointed for political considerations, looking to the public service commission not as a means for solving difficult problems of government but as a step toward political advancement or more profitable future association with the utilities"; "Regionalism" by Hedwig Hintze, which is chiefly a discussion of the movement in France and Spain; and "Representation" by F. W. Coker and Carlton C. Rodee, in which the observation is made that "political scientists have yet to find the solution for the difficulties in the way of organizing good representation." Carl Brinkmann and John Bauer have contributed an article of thirteen pages on "Public Utilities," which is divided into three parts dealing with the subject in general and also with the growth and extent of utilities and their problems in the United States and Canada and in Europe. The subject of "Political Parties" is dealt with in a long section of fifty pages by a group of writers including, among others, Arthur N. Holcombe, Harold F. Gosnell, Arthur W. Macmahon, W. A. Rudlin, Lindsay Rogers, W. E. Rappard, Malbone W. Graham, William Spence Robertson, and Harold S. Quigley. This section of the *Encyclopaedia* includes a discussion of the theory of parties by Professor Holcombe, an explanation of their general organization by Harold Gosnell, and a description of the party system and problems in each of the important countries. Professor Holcombe is inclined to the view that the two-party system, although "a convenient system for contented people," is "not an efficient system for the expression of public opinion when the variety of opinion and intensity of conviction are great." This entire section is a most valuable symposium on a subject of vital importance and interest. Another article of more than usual length (seventeen pp.) and significance is that on "Political Science" by Hermann Heller. Treating the subject under the topics of content and method, history, and function, the writer states that "political science can be said to have a function only if it be assumed that it is capable of providing a correct and authentic description, explanation, and criterion of political phenomena." In his opinion, a serious danger has been introduced, in the twentieth century especially, under the influence of the philosophy of Nietzsche and Bergson through "the radical relativization of thought in terms of 'life,'" and also through the ideas of such writers as Sorel and Pareto, according to whom "every pronouncement of political science is merely the sublimation of a highly individualized, thoroughly irrational, life situation." If such interpretations are correct, Mr. Heller fears that "political science has completed its own self-destruction and has finally done away with itself as a science." It is his opinion that "in order to reëndow its pronouncements with a universally binding authority, political science must succeed once again in isolating from the flux of historical and social evolution an unequivocal set of fixed con-

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stants," among the most significant of which is the nature of man. "Accordingly, political science, like all historical, sociological thought, must take as its starting point human behavior." That is why "it happens that the theoretical formulations of an Aristotle, a Hobbes, or a Marx still carry weight with present-day thinkers in the most varied political situations."—A. C. HANFORD.

Lewis Mumford's *Technics and Civilization* (Harcourt, Brace and Company, pp. xi, 495) warrants the attention of the student of political institutions and social theory both because of the scope of his treatment of the subject and because of the nature of the analysis presented. In his presentation of the rôle of the machine in modern culture, the author ranges widely and presents suggestive and stimulating interpretations. He is in agreement with the view, brilliantly demonstrated in the recent study of the British coal industry by John Nef, that the origins of a machine industry are to be found in a more remote past than has been appreciated. It is significant that the author in this connection stresses the importance of the mediaeval period, for it is here that the modern state also began to take form. There is a failure to recognize this, which leaves his analysis incomplete, and thus renders his concluding proposals thinner than they otherwise might be. This failure, however, is in part the fault of political scientists who have not yet explored sufficiently and interpreted to the general public the formation of the modern state around the administrative services that grew out of the king's household and the Italian city states. It is arguable that a modern machine society could not have come into existence without the provision by these early administrative services of the necessary conditions. Mumford indeed recognizes the part played by the rise of the national armies. Dorn's recent articles, the writings of Tout and Viollet, and Lybyer's study of Turkish administration under Muhamad the Conqueror are all parts of an interpretation which should increasingly correct the over-emphasis on parliamentary and judicial development which has hitherto existed, and which dwells supreme today in the mind of lawyer and journalist. When we understand how important a part organization and administration have played in the development of modern society and in making possible interdependent markets and large-scale production, their essential rôle in the society envisaged by Mumford as the proper fulfillment of the machine will be clearer. Administration will then be a central part of any adequate social theory instead of an afterthought. *Technics and Civilization* should be excellent supplementary reading in the study of modern political theory despite the relative absence of adequate mention of the contribution of political institutions concretely through administration to the increasing use of the machine.—JOHN M. GAUS.

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The rapid multiplication of courses on public opinion given in departments of political science, sociology, or journalism amply justifies the appearance of Harwood L. Childs, *A Reference Guide to the Study of Public Opinion* (Princeton University Press, pp. vi, 105). Professor Childs is experimenting with his course at Princeton, and the brief syllabus here printed should prove helpful to many other teachers. He begins by drawing attention to the importance of public opinion in politics, and then passes to a brief discussion of "leaders and managers" of opinion. Gradually the topics become more impersonal and abstract, until at the end the student is reading about the application of rigid definitions and methods of measurement to the field. Each topic is introduced with brief paragraphs of explanation. Professor Childs is well versed in the literature and has developed a sound sense of reality through his research on economic promotional groups in this country and in Germany. His style is direct and clear, and there is every evidence that he has a pedagogical, though an unpedantic, conscience. The criticism which Professor Childs receives of his conception of the field and of the needs of undergraduates ought to benefit the inevitable textbook which will some day emerge—a consummation which in this case can be anticipated with far less abhorrence than usual. I see no good reason for the exclusion of foreign references. I doubt if Princton students are as parochial as this implies.—HAROLD D. LASSWELL.

Mr. Lionel Curtis believes, above all else, that "to engender in men a desire to serve each other is the end and object of human existence." And this, suitably reworded, affords the "guiding principle in public affairs" which his publishers, perhaps intimate to his thoughts, surmised it was his aim to discover in his *Civitas Dei* (Macmillan, pp. xxiii, 297). But, of course, no amount of history will ever yield either directly or by inference any such ethical ultimate. What does apparently ground the principle—apart from its antecedent existence in the author's mind—is the authority of Jesus, "the greatest thinker of all time." At any rate, Mr. Curtis makes it his chief care to demonstrate that the earthly brotherhood of man was Jesus' essential message, distorted though it was by his followers and interpreters, hopelessly infected with the epidemic supernaturalism. A second major task is to elucidate his duty-principle by the reading of history, from earliest times down to the English Commonwealth, which, to Mr. Curtis' English eyes, shows the principle in practice. If philosophy be defined as "seeing thoughts through," this is not good philosophy of history; yet it is attractive stylistically, satisfies in its insights, and is good history.—L. MANOCK PAPE.

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Reaction and Revolution, 1814–1832 (Harper and Brothers, pp. xii, 317), by Fredrick B. Artz, is a volume in the new coöperative history, "The Rise of Modern Europe," edited by Professor William L. Langer of Harvard. This series, according to the preface, has "the current broad conception of the scope of history, . . . to go beyond a merely political-military narrative." The volume under review essays this task for the period 1815–32. The author has spent many years in study of the period and has already published *France Under the Bourbon Restoration.* In the present work he has interesting chapters on the throne and the altar, the middle class and the peasants, the search for a principle of authority, the creeds of Liberalism, the first years of peace, 1815–1820, the crisis of 1820, the rise of a new generation, the disintegration of the restoration, 1820–1830, and the revolutionary movements of 1830. These chapters are followed by a selected bibliography of thirteen pages, forty-eight illustrations, and an index of nine pages. Faced with difficult problems, of selection and emphasis, the author has made a new and interesting synthesis of familiar materials and has carried out the aims of the series in a highly creditable manner.—C. P. HIGBY.

Students of taxation and tax administration do not need to be told of the usefulness of *Federal and State Tax Systems*, published for some years by the Tax Research Foundation. Broadened in scope and otherwise improved, the publication now appears as *Tax Systems of the World* (pp. 282), prepared under the direction of the New York State Tax Commission and issued for the Tax Research Foundation by the Commerce Clearing House, Inc., of Chicago. The volume contains detailed analytical tax charts and tables for the United States, for all of the forty-eight states, and for most other countries of the world; and the bewildering mass of data is so complete and so carefully presented that with this volume at his elbow the student of the subject will find his labors, on the purely factual side, reduced to a minimum. An editorial foreword by Miss Mayme S. Howard indicates that, by developing a yet more effective plan of collaboration on the part of contributors throughout the world, the publication, as issued from year to year, is expected to attain still greater completeness and indispensability.

The third edition of *Principles and Problems of Government*, by Charles G. Haines and Bertha M. Haines (Harper and Brothers, pp. x, 642), is a thorough revision of this standard introductory text. A considerable amount of additional material on such timely topics as government and industry, social legislation, public utilities, administrative justice, and Fascism reflects a significant interest in recent problems of political organization and action. Included in this additional material is a concise

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summary of the Roosevelt recovery program. A rearrangement of the subjects discussed also tends to emphasize the social-economic *milieu* to which contemporary government must be adjusted. Some sections from the older editions, such as that on law, have been expanded and considerably improved. Bibliographies are well selected for introductory study.—JOHN D. LEWIS.

Although competent studies of disaffection in the Southern Confederacy have been made, it has remained for Miss Georgia Lee Tatum in *Disloyalty in the Confederacy* (University of North Carolina Press, pp. ix, 176) to compile the fragmentary records of the secret "peace societies" among the Confederate "disloyal." Three such societies, each with its passwords, grips, and mystic symbols, located respectively in Arkansas, the middle South, and the Carolina up-country, are treated. Members of the societies were mostly from the lower economic classes, driven into secret plotting by the hardships of war or the Confederacy's conscription, impressment, and tax laws. The book offers a convenient summary of the extant official records and the few essays which have been written on the subject, but the author has neglected the wealth of material to be found in the personal narratives of Southern unionists, refugees, and prisoners. The work of the societies in encouraging desertion is mentioned, but their more significant function of aiding refugees, fugitive slaves, and excaping prisoners is hardly suggested.—W. B. HESSELTINE.

Under the general and none too accurate title, *Education and Government* (pp. 210), the Yale University Press has recently published a collection of essays and addresses by the late President Arthur T. Hadley, of that institution. The essays, nearly all of which have been printed elsewhere, deal with such miscellaneous topics as "Principles and Methods of Rate Regulation," "The Meaning of Valuation," "What is Education?," etc. Of some interest to the political scientist is the discussion of "Law Making and Law Enforcement," reprinted from *Harper's*.

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CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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